

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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)
RICHARD BROWN *et al.*,)
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Plaintiffs)
)
v.) C.A. NO. 05-10188-MEL
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)
SUFFOLK COUNTY,)
Defendant)
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)
_____)

and

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)
)
GIUSEPPE MAROTTA *et al.*,)
)
Plaintiff)
)
v.) C.A. NO. 05-10032-MEL
)
)
SUFFOLK COUNTY,)
Defendant)
)
)
_____)

STATEMENT OF MATERIAL FACTS AS TO WHICH PLAINTIFFS CONTEND
THERE IS NO GENUINE ISSUE TO BE TRIED
PURSUANT TO LOCAL RULE 56.1

Pursuant to Local Rule 56.1, the Plaintiffs set forth the following facts, about which they contend there are no genuine issues to be tried.

1. The Plaintiffs in these related actions case are corrections officers, employed by the Defendant, Suffolk County.¹

2. The Plaintiffs are members of a labor organization, AFSCME Council 93, AFL-CIO, (the “Union”), which is presently and was at times relevant to this action, the labor representative for corrections officers employed by Suffolk County.²

3. AFSCME Local 419 is comprised of officers in the classification of “CO-1, CO-2, CO-3, and CO-4”, and who are assigned to the Suffolk County House of Correction.³ (The caption of the action for these Plaintiffs is *Marotta et al v. Suffolk County*, 05-10032-MEL.) AFSCME Locals 3643 and 3967 represent Plaintiffs classified as superior officers (JO-4, JO-5, and CO-5) assigned to the Suffolk County House of Correction, and in certain cases, the Suffolk County Jail.⁴ (The caption of the action of the Plaintiffs in this action is *Brown et al. v. Suffolk County*, 05-10188-MEL.)

4. The Defendant and local unions have been parties to a series of collective bargaining agreements that set forth terms and conditions of employment that uniformly apply to unionized employees, including the employees’ hourly “base” rates of pay, and their entitlement to receive other compensation in addition to their base hourly rate, including hourly differentials and lump sum payments (hereinafter, the “premiums”).⁵

¹ Admitted in Defendant’s Answer in *Marotta v. Suffolk County*, 05-10032, ¶ 8; *Brown v. Suffolk County*, 05-10188, ¶ 8.

² *Id.*, see also “Agreement” in preamble of Ex. 1A, collective bargaining agreement (“CBA”) between Suffolk County and AFSCME Council 93, AFL-CIO, Local 419 set to expire June 2005; and Ex. 2A, ¶ CBA between Suffolk County and the AFSCME Council 93 AFL-CIO, Locals 3643 and 3967, set to expire June 2003.

³ See Ex. 1A, CBA, Article 1

⁴ See Ex. 2A, CBA Article 1.

⁵ See Article XIX in Local 419 CBA’s dating from July 1, 1999 to June 30, 2008, Ex.’s 1A through 1D; Article XIX in Locals 3653 and 3967 CBA’s dating from July 1, 1998 to June 30, 2003, Ex.’s 2A through 2B.

5. For example, under the CBA⁶ that was set to expire on June 30, 2005 between the Defendant and Local 419, covered union members were entitled to receive premium pay as set forth below:

- “Educational Incentives,” including \$.72 per hour for having attained an associate’s degree, \$1.20 per hour worked for the attainment of a bachelor’s degree; and \$1.44 per hour worked for the attainment of a master’s degree (Local 419 CBA; Article XIX, Section 3).
- “Weekend Differential,” including \$1.00 per hour for all regularly scheduled hours worked between the hours of 11:00 p.m. on Friday and 11:00 p.m. on Sunday (Article XIX, Section 9).
- “Shift Differential,” including \$1.05 per hour for all regularly scheduled actual hours worked on a night shift (Article XIX, Section 10);
- “Public Safety,” including \$1.30 per hour for employees graded as CO-1, CO-2, and CO-3, and \$1.54 per hour for employees graded as CO-4 (Article XIX, Section 11);
- “Longevity Pay,” in lump sums based on years of service (Article XIX, Section 8);
- A “Fitness Bonus” of \$800, payable on or before December 15 each year, for employees who meet the Defendant’s “Wellness and Fitness” program requirements (Article XIX, section 14).

⁶ CBA, Ex. 1A.

6. Likewise, for Locals 3643 and 3697, the CBA⁷ expiring June 30, 2003 promised employees these premiums:

- “Longevity”, in amounts ranging from \$364 to \$1040 based on officers’ years of service (Article XIX, Section 7.)
- “Weekend Differential” of \$1.00 per hour for all regularly scheduled hours actually worked between the hours of 12:00 midnight on Friday and 12:00 midnight on Sunday (Article XIX, Section 8.)
- “Shift Differential” in the amount of \$1.05 per hour for all regularly scheduled hours worked on a night shift (Article XIX, Section 9).
- “Supervisory Differentials”, including \$1.00 per hour for Shift Commanders, .15 per hour for all Department Heads (Article XIX, Section 10).
- “Public Safety Differential” in the amount of \$1.54 for all regularly scheduled hours worked (Article XIX, Section 11).
- “Educational Differential”, including \$.72 for an Associate’s Degree; \$1.20 for a Bachelor’s Degree; and \$1.44 for a Master’s Degree (Article XIX, Section 12.)
- A “Fitness Bonus” of \$800.00 payable to employees who meet the “Wellness and Fitness” incentive.

⁷ Ex. 2A.

- A “Uniform Allowance” in a lump sum of \$450.00, and an hourly differential of \$0.22 for all regularly scheduled hours actually worked (Article XVII, Section 3.)

7. At all times relevant to this action, the City of Boston, through its Central Payroll Unit, has processed the payroll of the Suffolk County Sheriff’s Department.⁸

8. By letter dated November 24, 1998, Virginia Tsei, Boston’s Director of Labor Relations, notified all impacted employee unions that the City of Boston was converting its payroll to use PeopleSoft software.⁹ Tsei’s letter notified the unions that Boston was considering using PeopleSoft for the purpose of “[c]onsolidating all employee earnings (i.e., base pay and overtime) during each pay period into a single payment.”¹⁰

9. Prior to the time the City converted to PeopleSoft, all bargained-for shift differentials were included in the Plaintiffs’ overtime rates of pay.¹¹ The Sheriff’s Department determined these rates manually, using its in-house “Data Ease” system, which Peoplesoft replaced.¹² At a hearing on November 13, 2001, related to a prohibited practice charge filed against the Defendant by the union related to the conversion, Maura McDonough, who served as the Assistant Director of Personnel for the Sheriff’s

⁸ Ex. 3, Deposition Transcript of Michael Cawley, p. 9; Ex. 4, Deposition Transcript of Thomas Yotts, p. 9-10. The Treasurer of the City of Boston also acts as the Treasurer of Suffolk County. See Ex. 4, Yotts Tr./10.

⁹ Ex. 5, Letter from Virginia Tsei Notifying Unions of Implementation of PeopleSoft, dated 11/24/98.

¹⁰ Ex. 5, Tsei Letter.

¹¹ Ex. 3, Cawley Tr./15; Ex. 6, Memorandum of Michael Cawley, p. 1: “Prior to the conversion to PeopleSoft in October of 1999, our payroll data including OT calculation was processed on Dataease. The Personnel Division would send a weekly OT disk up to City Hall, which would include the number of OT hours worked multiplied by the FLSA rate. The FLSA rate included payments received for regular hours worked and differentials.”

¹² Cawley Memorandum, Ex. 6.

Department before the conversion to PeopleSoft, and its Director thereafter, testified as to how the Defendant established and paid the Plaintiffs' overtime rates:

In the Data E's (sic) System, all differentials and regular weekly hourly rates were in the system. So if an officer worked — was on the night shift and got public safety differential, then that was included in their OT in the sense that if they got 40 hours of public safety, 40 hours of night dif, and 40 hours of regular pay, all of that would be added up, divided by 40 and that would be their overtime rate.¹³

10. The conversion of the Suffolk County payroll to Peoplesoft took place in November of 1999.¹⁴ Instead of making the manual calculations under Data Ease, the Sheriff's Department keyed the same data it had manually provided the City directly into its own computer system; the City Treasurer's office then generated the checks.¹⁵

11. The first paychecks cut to Suffolk County employees using PeopleSoft were issued on November 5, 1999.¹⁶ McDonough immediately received complaints from corrections officers that they were being underpaid because the differentials were not being included in their overtime rate of pay.¹⁷ Rather, the Plaintiffs' overtime rates were based on 1.5 times their base hourly rates of pay.¹⁸ Concerned that this change violated the FLSA, McDonough contacted the City, and reported the problem.¹⁹

12. Reflecting his concern about the situation, on or about January 24, 2000, Thomas Yotts, the Defendant's Chief Financial Officer, sent a memorandum to Sally

¹³ Ex. 7, Labor Relations Commission Transcript ("LRC Tr.") p. 70. McDonough was deposed on June 27, 2007, and was provided a copy of the LRC transcript prior to her deposition. At her deposition, she adopted her testimony. Ex. 8, McDonough Deposition Transcript, pp. 8-9; *see also* Ex. 3, Cawley Tr./19.

¹⁴ Glora Testimony, LRC Tr./15.

¹⁵ Yotts Tr./12-13; *see also* Cawley Tr./18-19.

¹⁶ Ex. 7, McDonough Testimony, LRC Tr./67.

¹⁷ Ex. 8, McDonough Tr./13; *see also* Ex. 11, Affidavit of Thomas Yotts, dated March 19, 2001 (submitted with the Suffolk County Sheriff's Department's response to the Union's prohibited practice charge), in which he states: "The [PeopleSoft] system does not automatically include differentials paid to certain employees in calculating the overtime rate."¹⁷

¹⁸ Ex. 7, McDonough Testimony, LRC Tr./70-71; 72; Ex. 8, McDonough Tr./13.

¹⁹ Ex. 8, McDonough Tr./13-14.

Gloria, the City of Boston's Auditor who was in charge of payroll matters, in which he identified a number of issues the implementation of PeopleSoft had caused for the Sheriff's Department.²⁰ Several of the bullet points of his letter referred to the failure of PeopleSoft to include differentials in overtime due union employees:

- **Weekend Differentials need to be automatic for hours worked on weekends.**
- **Differentials paid through additional pay need to be automatic for the entire workgroup.** Right now, whenever employees become active on the payroll (end LOA, WC or new hire) they do not receive the differentials,
- Differentials are not paid for personal time taken for employees in Local 419 and Local 3967. Differentials are also not paid when employees swap on for employees in Locals 419, 3967, 1134, 3643, and Jail RN's. I believe this is because personal time is mapped to sick and swap on is mapped to a no-pay status however this is not consistent with the contract and needs to be changed.
- **The method of FSLA overtime rate calculation is not consistent with that used by the SCSD before implementation.** (Emphasis added.)

13. Likewise, concerned that the employees were not being paid in accordance with the Fair Labor Standards Act, McDonough contacted the City Treasurer's office, and alerted it to her concerns.²¹ In an email dated March 9, 2000, she sent Denise Jordan of the City a spreadsheet calculating retroactive pay, and commented:

This is a report that I received to calculate Retro for WG404, 405, 403. I think it is a good example of the Overtime issue we discussed at the meeting a couple of weeks ago. As you can see for a regular day at one rate, the OT rate for that same person is the regular rate. The far right column states dollar amount paid and it does not reflect a special accumulator. **No differentials or prior 01 is reflected in the actual 01 rate.** This is the case with all workgroups but they were not getting retro so I do not have a report of their time paid. I can get examples for you if you need them. (Emphasis supplied.)²²

²⁰ Ex. 12, Yotts memo to Glora, dated January 24, 2000.

²¹ Ex. 8, McDonough Tr./13-14.

²² Ex. 9, McDonough Email to Jordan, dated March 9, 2000.

14. In March of 2000, McDonough sent a report to Glora, showing her how PeopleSoft failed to factor differentials into overtime payments:

I think it is a good example of the Overtime issue we discussed at the meeting a couple of weeks ago. As you can see for a regular day at one rate, the OT rate for that same person is the regular rate * 1.5. The far right column states dollar amount paid and it does not reflect a special accumulator. No differentials or prior OT is reflected in the actual OT rate. This is the case with all workgroups but they were not getting retro so I do not have a report of their time paid. I can get examples for you if you need them.²³

15. Reflecting her ongoing concern about FLSA violations, approximately 30 days later, McDonough wrote Pat Murphy of the City, and asked her: "Do you have any idea when the Overtime (*sic*) will reflect FLSA? When weekend differentials will be automatic?"²⁴ McDonough sent as many as 25 e-mails to the City in an attempt to resolve the error.²⁵

16. On October 5, 2000, Michael Cawley, the Director of Personnel for the Sheriff's Department, with the assistance of the Assistant Director, McDonough,²⁶ wrote a memorandum about overtime rate change to Charles Abate, the Department's Employee Relations Director; Yotts;²⁷ and Ian Gainsford, its Deputy Financial Officer.²⁸ Given the importance of this Memorandum, it is quoted in its entirety here, with emphasis added in boldface.

The intent of this memo is to provide you with information regarding overtime calculation so the Department can formalize, with both City Hall and the Unions, our policy on calculating overtime rates. Please find below descriptions of how OT has been

²³ Ex. 9, McDonough E-Mail to Jordan, March 9, 2000; Ex. 8, McDonough Tr./23.

²⁴ Ex. 10, McDonough Email to Murphy, dated April 10, 2000.

²⁵ Ex. 7, LRC Tr./74;

²⁶ Ex. 8, McDonough Tr./16.

²⁷ Ex. 4, Yotts Tr./26.

²⁸ Ex. 6, Memorandum of Cawley, dated October 3, 2000.

calculated in the past, how we currently calculate OT and recommendations on how we should calculate OT.

FLSA Calculation Prior to PeopleSoft:

Prior to the conversion to PeopleSoft in October of 1999, our payroll data including OT calculation was processed on Dataease. The Personnel Division would send a weekly OT disk up to City Hall, which would include the number of OT hours worked multiplied by the FLSA rate. **The FLSA rate included payments received for regular hours worked and differentials.**

Example 1: John Smith 40 hrs per week @ \$20.00 for a weekly salary of
\$800.00
40 hrs of Night Diff@ \$1.00 pr hour
\$40.00
16 hrs of Weekend Diff @ \$1.00 pr hr
\$16.00

\$856.00

$$\text{FLSA Rate } \$856.00/40\text{hrs} = \$21.40 \times 1.5 \\ = \$32.10$$

Example 2: John Smith Called in sick on one day

40 hrs per week @ \$20.00 for a weekly salary of
\$800.00
32 hrs of Night Diff @ \$1.00 pr hour
\$32.00
16 hrs of Weekend Diff @ \$1.00 pr hr
\$16.00

\$848.00

$$\text{FLSA Rate } \$848.00/40 \text{ hrs} = 21.20 \times 1.5 \\ = \$31.80$$

Notes:

It should be noted that the intent of the Dataease calculations was to include the amount employees earned in differentials into the OT rate paid.

It also should be noted that the rate calculated was based on the previous workweek and not the week in which the overtime was worked. **Strict interpretation of the FLSA dictates that these calculations be generated for the week in which the employee works OT.**

It should also be noted that when employees had not worked forty hours, they were still paid at a rate of least 1.5x the regular rate. The FLSA states that until an employee actually works forty hours, he/she should be paid at straight time. (see Example 2 on page 2)

(Emphasis added.)

FLSA Calculation by PeopleSoft, 10/99 to present:

The BAISE project has configured the PeopleSoft System to calculate overtime at 1.5 x the regular hourly rate.

Example 1: John Smith	40 hrs per week @ \$20.00 for a weekly salary of \$800.00 40 hrs of Night Diff @ \$1.00 pr hour \$40.00 16 hrs of Weekend Diff @ \$1.00 pr hr <u>\$16.00</u>
	\$856.00

$$\begin{aligned}\textbf{FLSA Rate} &= \$800.00 / 40 \text{ hrs} = 20.00 \times 1.5 \\ &= \$30.00\end{aligned}$$

Ms. Sally Glora, City of Boston Auditor and Project Manager of the BAISE Project indicated that the reason the BAISE project does not utilize FLSA calculations is that employees who are paid 1.5x the regular hourly rate are receiving a better rate than if FLSA guidelines are followed. The specific guideline that Ms. Glora is referring to states that until an employee actually works 40 hours, only then are they entitled to hours paid on an overtime rate. (see below example)

Example 2: John Smith 32 Reg hrs per week @ \$20.00 for a

weekly salary of \$640.00
8 Sick hrs (or Vac, Comp & Credit)
\$160.00

If Mr. Smith works 8 hr OT in this week, he would earn those 8 hrs at the regular rate of \$20.00 pr hour because he did not work 40 hours in that week.

In my opinion, the City of Boston came to the conclusion that employees were most likely being overpaid by using the flat 1.5 rate. The City is willing to overlook that added expense in exchange for not adhering to the extensive guidelines required to fully implement the FLSA. Fully implementing the FLSA guidelines would be an administrative and logistical nightmare for the BAISE project.

Recommendations

Based on meetings with the BAISE project leaders and as a result of inquiries from AFSCME, I feel as though we have two viable options. **These options are based on the assumption that we are either going to follow the FLSA and all its guidelines or that we are going to follow the CBA's in reference to "hours of work and overtime" language.** In my opinion we have to educate the unions as to the options available.

Option 1 —Continue to calculate the overtime rate at 1.5x the regular rate. This would benefit both the employees as well as the Department.

Employee Benefits

- The employees would benefit by not having to actually work forty hours in a week in order to earn more than their regular rate of pay for OT hours. For example, an employee could use a "comp taken" day, work overtime and be compensated at the 1.5 rate. Under the FLSA scenario, an employee would take a comp day, work overtime and be compensated at straight time for the OT worked. This would be our strongest argument to the unions for keeping the rate as it is currently calculated.
- The employees would benefit in that they would receive a consistent OT rate as opposed to a different rate each week. This would eliminate confusion.

Department Benefits

- The Personnel Division would not have to expend the time and resources of working with the BAISE Project on such a grand undertaking.
- The Department would not be at risk of having to change the OT calculation if and when we are assumed by the state.
- The Department would finally bring closure to the conflicting language between the FLSA and the CBA's.
- The Department would not have to calculate any retroactive OT payments from October 1999. An undesirable result of any retro calculations will most likely bring to light that employees have been overpaid under the FLSA guidelines.

Option 2 —Follow the strict guidelines of the FLSA in calculating OT rates. Under this scenario, the OT rate would include the regular wages, and all differentials, The wellness money would also have to be included in this rate.

Employee Benefits

- Some employees would see an increase in their OT rate as a result of including the various differentials. This would only affect individuals who do not take time off.

Department Benefits

- The Department would finally be in full compliance with the FLSA.
- This could lead to a small decrease in the amount of sick time taken. For example if an officer knows that if he calls in sick and works overtime in the same pay period, he/she will only be paid straight time for the OT hour worked.

In conclusion, I feel that the Department's stance should be similar to that of the City of Boston as it relates to the overtime calculation. We either follow the language of the CBA's and not include differentials in OT calculation, or we implement every aspect of the FLSA including the provision that employees must work forty hours before the FLSA rate takes effect. I think we have to convey to the unions that at best, with strict

adherence to the FLSA, some of their members may receive additional compensation but many of their members will only receive straight time for overtime worked in a week in which they utilize accrued time. I am also confident that if retroactive payments are required to be processed under the FLSA rules, many employees would owe the Department money.

I realize this is a lot to digest so please call me with any questions or concerns so we may bring this issue to a conclusion.

17. At his deposition, while referring back to his memorandum, Cawley admitted that he knew the FLSA required differentials to be included in employees' overtime rates of pay.²⁹ The memorandum's coauthor, McDonough, admitted this as well.³⁰

18. At her deposition in June of 2007, McDonough testified that the Defendant did not factor the differentials into the Plaintiffs' overtime rate because it would have been administratively onerous to do so.³¹ In her testimony before the Labor Relations Commission in 2001, McDonough stated it would have been possible for the differentials to be included in the calculations of overtime for impacted employees.³² For example, the Sheriff's Department could have instructed the City to account for the differentials each employee was entitled to be paid under the collective bargaining

²⁹ Ex. 3 Cawley, Tr./14, line 20-23; Tr./16-17, lines 20-23; 1; Tr./17, lines 18-21; Tr./21, lines 15-23; Tr./22 lines 12-20.

³⁰ Ex. 8, McDonough Tr./18.

³¹ Ex. 8, McDonough Depo. Tr./28.

- 10 Q. Why didn't -- if you know, why didn't the Sheriff's
 11 Department accede to the union's demand that the
 12 differentials be put back into the overtime
 13 calculations again like they were before the
 14 conversion?
 15 A. My understanding is it was impossible -- if not
 16 impossible, then extremely, extremely difficult and
 17 time-consuming.

³² McDonough Testimony, LRC Tr./78.

agreements.³³ McDonough also testified at the LRC that the Sheriff's Department could have also accounted for the differentials through "time and labor", that is, by recording the differentials to which the employees were entitled on their weekly attendance calendars.³⁴

Respectfully submitted,

THE PLAINTIFFS,

By their attorney,

s/Daniel W. Rice

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Dated: November 15, 2007

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on November 15, 2007.

/s/ Daniel W. Rice
Daniel W. Rice

³³ McDonough Testimony, LRC Tr./78.

³⁴ Ex. 7, McDonough Testimony, LRC Tr./78.

EXHIBIT 1A

A G R E E M E N T

BETWEEN

SUFFOLK COUNTY

AND

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME)**

AFL-CIO COUNCIL 93 AND AFFILIATE

**SUFFOLK COUNTY HOUSE OF CORRECTION
LOCAL 419**

Effective July 1, 2003

Expiring June 30, 2005

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AGREEMENT

THIS AGREEMENT, made under Chapter 150E of the General Laws, by and between the Sheriff of Suffolk County, hereinafter called "the Municipal Employer," and Suffolk County, hereinafter called "the County," and the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, Council 93 and affiliated Suffolk County House of Correction Local 419, all which, jointly and severally, are hereinafter called "the Union."

WITNESSETH

WHEREAS the above-cited statutory provisions grant to employees of political subdivisions of the Commonwealth the right to bargain collectively with their Municipal Employer; and

WHEREAS the parties to this Agreement desire to establish a state of amicable understanding, cooperation and harmony; and

WHEREAS the parties to this Agreement consider themselves mutually responsible to improve the public service through the creation of increased morale and efficiency;

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties mutually agree as follows:

ARTICLE I EMPLOYEES COVERED BY THIS AGREEMENT

The Municipal Employer recognizes the Union as the exclusive bargaining representative, for the purpose of collective bargaining relative to wages, hours, and other conditions of employment, of all current employees of the Suffolk County House of Correction in the compensation grades CO-1, CO-2, CO-3, and CO-4.

will be discussed at the Labor-Management Committee, and that the current practice of discussing health and safety issues at the committee prior to filing a grievance on same will continue.

Section 5. The union agrees to form a committee, along with the Municipal Employer and all other affected locals which choose to participate, the purpose of which is to examine and discuss the implications of a merger between Local 419 of AFSCME, Council 93 and JOEASC, as well as the most efficient means of effectuating the merger.

Section 6. The department and the union agree to form a joint committee to explore the issue of "line of duty" pay.

ARTICLE XIX COMPENSATION

Section 1. The following wage scale shall govern all employees covered by this collective bargaining agreement:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9
CO-1	566.75	647.38	732.14	782.42	845.03	861.91	879.15	896.73	914.6
CO-2	588.13	682.90	779.95	832.12	898.68	916.65	934.99	953.69	972.7
CO-3	618.81	725.91	841.33	888.40	959.47	978.67	998.24	1,018.21	1,038.5
CO-4	674.48	798.54	933.31	980.34	1,058.78	1,079.96	1,101.56	1,123.59	1,146.0

Section 2. Correction officers covered by this Agreement who have ten (10) years of service shall be placed in the maximum of the grade to which they are provisionally, as well as permanently, promoted.

Section 3. Educational Incentives.

A. Differential

Effective July 1, 2000, there shall be an educational incentive differential for those bargaining unit members with degrees from accredited colleges and universities approved by the Sheriff as follows:

1. Associates Degree - \$.72/ hour for all regularly-scheduled actual hours worked;
2. Bachelors Degree - \$1.20/ hour for all regularly-scheduled actual hours worked;
3. Masters Degree - \$1.44/ hour for all regularly-scheduled actual hours worked.

B. Tuition Remission

The Municipal Employer shall establish a program for tuition remission in accordance with existing state guidelines.

Section 4. Mileage. The mileage allowance shall be thirty-three cents (\$.33) per mile.

Section 5. All employees shall receive step raises in accordance with the Suffolk County Classification and Compensation Plan of 1963, as amended.

Section 6. Health Insurance

- A. The Municipal Employer's contribution to all group hospitalization insurance premiums shall be as follows:
 - 1. 75% of total premium for the indemnity plan selected by the employer, including Master Medical or equivalent coverage;
 - 2. 90% of the total monthly premium for all approved and authorized health maintenance organizations.
- B. Should the county develop an RFP for a policy other than BC/BS Master Medical, it shall meet with the union in advance of the advertisement of said RFP. The meetings shall be for the purpose of soliciting comments and suggestions from the union prior to finalizing the RFP. The union shall be furnished a copy of the finalized RFP.

Section 7. Financing.

- A. No monies shall be paid under this Article unless and until the funds necessary to implement this Agreement have been appropriated and approved by the County Government Finance Review Board.
- B. The provisions of Chapter 190, §18 of the Acts of 1982 are incorporated into this Agreement.

Section 8. Longevity. There shall be a program as follows:

- A. Employees with five (5) years of service with the Suffolk County House of Correction but less than ten (10) years - \$350.00
- B. Employees with ten (10) years of service with the Suffolk County House of Correction but less than fifteen (15) years - \$500.00

- C. Employees with fifteen (15) years of service with the Suffolk County House of Correction but less than twenty (20) - \$600.00
- D. Employees with twenty (20) years of service with the Suffolk County House of Correction but less than twenty-five (25) - \$700.00
- E. Employees with twenty-five (25) or more years of service with the Suffolk County House of Correction - \$800.00

Section 9. Weekend Differential. The weekend differential shall be \$1.00 per hour for all regularly-scheduled actual hours worked between the hours of 11:00 PM on Friday and 11:00 PM on Sunday.

Section 10. Shift Differential.

- A. The shift differential shall be \$1.05 per hour for all regularly-scheduled actual hours worked on a night shift.
- B. The term "night shift" shall mean a regular work shift four (4) or more hours of which occur between 7:00 PM on one day and 8:00 AM on the next succeeding day.

Section 11. Public Safety Differential.

- A. The public safety differential shall be \$1.30 per hour for employees in grades CO-1, CO-2, and CO-3 for all regularly-scheduled actual hours worked.
- B. The public safety differential shall be \$1.54 per hour for employees in grade CO-4 only for all regularly-scheduled actual hours worked.

Section 12. Actual Hours. The definition of "actual hours worked" shall include all regularly-scheduled hours worked and vacation days.

Section 13. The Municipal Employer agrees to contribute at least \$ 8.76 weekly to the Massachusetts Public Employees Fund for dental/eyeglass benefits for bargaining unit members.

Section 14. Fitness Bonus. Employees who annually meet the requirements of the Municipal Employer's voluntary "Wellness and Fitness" program will receive a cash payment of \$ 800.00, payable no later than December 15th each year.

EXHIBIT 1B

EXHIBIT

tabbies®

W #12

AGREEMENT

BETWEEN

SUFFOLK COUNTY

AND

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME)

AFL-CIO COUNCIL 93 AND AFFILIATE

SUFFOLK COUNTY HOUSE OF CORRECTION
LOCAL 419

Effective July 1, 1999

Expiring June 30, 2000

Section 5. The union agrees to form a committee, along with the Municipal Employer and all other affected locals which choose to participate, the purpose of which is to examine and discuss the implications of a merger between Local 419 and Local 1134, each of AFSCME Council 93, as well as the most efficient means of effectuating the merger.

ARTICLE XIX COMPENSATION

Section 1A. Effective June 30, 1999, the following wage scale shall govern all employees covered by this collective bargaining agreement:

<u>Grade</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
CO-1	\$506.01	\$577.99	\$653.67	\$698.57	\$754.45	\$769.53
CO-2	\$525.09	\$609.71	\$696.36	\$742.93	\$802.36	\$818.41
CO-3	\$552.48	\$648.11	\$751.16	\$793.18	\$856.64	\$873.77
CO-4	\$602.19	\$712.95	\$833.28	\$875.27	\$945.30	\$964.21

Employees who, as of June 30, 1999, have a minimum of 52 weeks of creditable service at Step 5 shall be placed at Step 6.

Section 1B. Effective July 3, 1999, the following wage scale shall govern all employees covered by this collective bargaining agreement:

<u>Grade</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>
CO-1	521.19	595.33	673.28	719.52	777.09	792.62
CO-2	540.85	628.00	717.25	765.22	826.43	842.96
CO-3	569.06	667.55	773.69	816.98	882.33	899.99
CO-4	620.26	734.34	858.28	901.53	973.66	993.14

Section 1C. Effective September 4, 1999, the following wage scale shall govern all employees covered by this collective bargaining agreement:

<u>Grade</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>	<u>Step 6</u>	<u>Step 7</u>
CO-1	521.19	595.33	673.28	719.52	777.09	792.62	808.47
CO-2	540.85	628.00	717.25	765.22	826.43	842.96	859.82
CO-3	569.06	667.55	773.69	816.98	882.33	899.99	917.99
CO-4	620.26	734.34	858.28	901.53	973.66	993.14	1013.00

Employees who, as of September 4, 1999, have a minimum of 104 weeks of creditable service at Step 5 and/or Step 6 shall be placed at Step 7.

Section 2. Correction officers covered by this Agreement who have ten (10) years of service shall be placed in the maximum of the grade to which they are provisionally, as well as permanently, promoted.

Section 3. Education Differential. Effective July 3, 1999, there shall be an educational incentive differential for those bargaining unit members with degrees in the fields of Criminal Justice or Law Enforcement from an approved college and approved by the Sheriff as follows:

Associates Degree - \$.45/ hour for all regularly scheduled actual hours worked;

Bachelors Degree - \$.60/ hour for all regularly scheduled actual hours worked;

Masters Degree - \$.75/ hour for all regularly scheduled actual hours worked."

Section 4. Mileage. Mileage allowance shall be thirty-three cents (\$.33) per mile.

Section 5. All employees shall receive step raises in accordance with the Suffolk County Classification and Compensation Plan of 1963, as amended.

Section 6. Health Insurance.

A. The Municipal Employer's contribution to all group hospitalization insurance premiums shall be as follows:

1. 75% of total premium for the indemnity plan selected by the employer, including Master Medical or equivalent coverage;
2. 90% of the total monthly premium for all approved and authorized health maintenance organizations.

B. Should the county develop an RFP for a policy other than BC/BS Master Medical, it shall meet the union in advance of the advertisement of said RFP. The meetings shall be for the purpose of soliciting comments and suggestions from the union prior to finalizing the RFP. The union shall be furnished a copy of the finalized RFP.

C. The Municipal Employer agrees to contribute at least \$8.76 weekly to the Massachusetts Public Employees Fund for dental/eyeglass benefits for bargaining unit members.

Section 7. Financing.

- A. No monies shall be paid under this Article unless and until the funds necessary to implement this Agreement have been appropriated and approved by the County Government Finance Review Board.
- B. The provisions of Chapter 190, §18 of the Acts of 1982 are incorporated into this Agreement.

- Section 8. Longevity.** Effective January 1, 1999, there shall be a program as follows:
- A. Employees with five (5) years of service with the Suffolk County House of Correction but less than fifteen (10) years - \$250.00
 - B. Employees with ten (10) years of service with the Suffolk County House of Correction but less than fifteen (15) years - \$500.00
 - C. Employees with fifteen (15) years of service with the Suffolk County House of Correction but less than twenty (20) - \$600.00
 - D. Employees with twenty (20) years of service with the Suffolk County House of Correction but less than twenty five (25) - \$700.00
 - E. Employees with twenty five (25) or more years of service with the Suffolk County House of Correction - \$800.00

Section 9. Weekend Differential. Effective July 3, 1999 the weekend differential shall be increased to \$1.00 per hour for all regularly scheduled actual hours worked between the hours of 11:00 p.m. on Friday and 11:00 p.m. on Sunday.

Section 10. Shift Differential.

- A. Effective July 3, 1999 the shift differential shall be increased to \$1.05 per hour for all regularly-scheduled actual hours worked on a night shift.
- B. The term "night shift" shall mean a regular work shift four (4) or more hours of which occur between 7:00 p.m. on one day and 8:00 a.m. on the next succeeding day.

Section 11. Public Safety Differential.

- A. Effective July 3, 1999, the public safety differential shall be increased to \$1.01 per hour for employees in grades CO-1, CO-2, and CO-3 for all regularly-scheduled actual hours worked.
- B. Effective July 3, 1999, the public safety differential shall be increased to \$1.25 per hour for employees in grade CO-4 only for all regularly-scheduled actual hours worked.

Section 12. Actual Hours. The definition of "actual hours worked" shall include all regularly-scheduled hours worked and vacation days.

Section 13. The Municipal Employer agrees to contribute at least \$ 8.76 weekly to the Massachusetts Public Employees Fund for dental/eyeglass benefits for bargaining unit members.

EXHIBIT 1C



A G R E E M E N T

BETWEEN

SUFFOLK COUNTY

AND

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME)

AFL-CIO COUNCIL 93 AND AFFILIATE

SUFFOLK COUNTY HOUSE OF CORRECTION
LOCAL 419

Effective July 1, 2000

Expiring June 30, 2003

Council 93, as well as the most efficient means of effectuating the merger.

Section 6. The department and the union agree to form a joint committee to explore the issue of "line of duty" pay.

ARTICLE XIX COMPENSATION

Section 1A. Effective July 1, 2000, the following wage scale shall govern all employees covered by this collective bargaining agreement:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
CO-1	536.83	613.19	693.48	741.11	800.40	816.40	832.72
CO-2	557.08	646.84	738.77	788.18	851.22	868.25	885.61
CO-3	586.13	687.58	796.90	841.49	908.80	926.99	945.53
CO-4	638.87	756.37	884.03	928.58	1,002.87	1,022.93	1,043.39

Section 1B. Effective September 2, 2000, the following wage scale shall govern all employees covered by this collective bargaining agreement:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8
CO-1	536.83	613.19	693.48	741.11	800.40	816.40	832.72	849.38
CO-2	557.08	646.84	738.77	788.18	851.22	868.25	885.61	903.33
CO-3	586.13	687.58	796.90	841.49	908.80	926.99	945.53	964.44
CO-4	638.87	756.37	884.03	928.58	1,002.87	1,022.93	1,043.39	1,064.26

Employees who, as of September 1, 2000, have a minimum of 52 weeks of creditable service at Step 7 shall be placed at Step 8.

Section 1C. Effective July 7, 2001, the following wage scale shall govern all employees covered by this collective bargaining agreement:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8
*CO-1	550.25	628.52	710.82	759.63	820.41	836.81	853.54	870.61
CO-2	571.00	663.01	757.24	807.88	872.50	889.96	907.75	925.91
CO-3	600.79	704.77	816.82	862.53	931.52	950.16	969.17	988.55
CO-4	654.84	775.28	906.13	951.79	1,027.94	1,048.51	1,069.47	1,090.86

Section 1D. Effective September 1, 2001, the following wage scale shall govern all employees covered by this collective bargaining agreement:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9
CO-1	550.25	628.52	710.82	759.63	820.41	836.81	853.54	870.61	888.03
CO-2	571.00	663.01	757.24	807.88	872.50	889.96	907.75	925.91	944.43
CO-3	600.79	704.77	816.82	862.53	931.52	950.16	969.17	988.55	1,008.32
CO-4	654.84	775.28	906.13	951.79	1,027.94	1,048.51	1,069.47	1,090.86	1,112.68

Employees who, as of August 31, 2000, have a minimum of 52 weeks of creditable service at Step 8 shall be placed at Step 9.

Section 1E. Effective July 6, 2002, the following wage scale shall govern all employees covered by this collective bargaining agreement:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9
CO-1	566.75	647.38	732.14	782.42	845.03	861.91	879.15	896.73	914.67
CO-2	588.13	682.90	779.95	832.12	898.68	916.65	934.99	953.69	972.76
CO-3	618.81	725.91	841.33	888.40	959.47	978.67	998.24	1,018.21	1,038.57
CO-4	674.48	798.54	933.31	980.34	1,058.78	1,079.96	1,101.56	1,123.59	1,146.06

Section 2. Correction officers covered by this Agreement who have ten (10) years of service shall be placed in the maximum of the grade to which they are provisionally, as well as permanently, promoted.

Section 3. Educational Incentives.

A. Differential

Effective July 1, 2000, there shall be an educational incentive differential for those bargaining unit members with degrees from accredited colleges and universities approved by the Sheriff as follows:

1. Associates Degree - \$.72/ hour for all regularly-scheduled actual hours worked;
2. Bachelors Degree - \$1.20/ hour for all regularly-scheduled actual hours worked;
3. Masters Degree - \$1.44/ hour for all regularly-scheduled actual hours worked.

B. Tuition Remission

The Municipal Employer shall establish a program for tuition remission in accordance with existing state guidelines.

Section 4. Mileage. Effective July 1, 2000, the mileage allowance shall be thirty-three cents (\$.33) per mile.

Section 5. All employees shall receive step raises in accordance with the Suffolk County Classification and Compensation Plan of 1963, as amended.

Section 6. Health Insurance

- A. The Municipal Employer's contribution to all group hospitalization insurance premiums shall be as follows:
 1. 75% of total premium for the indemnity plan selected by the employer, including Master Medical or equivalent coverage;
 2. 90% of the total monthly premium for all approved and authorized health maintenance organizations.
- B. Should the county develop an RFP for a policy other than BC/BS Master Medical, it shall meet with the union in advance of the advertisement of said RFP. The meetings shall be for the purpose of soliciting comments and suggestions from the union prior to finalizing the RFP. The union shall be furnished a copy of the finalized RFP.

Section 7. Financing.

- A. No monies shall be paid under this Article unless and until the funds necessary to implement this Agreement have been appropriated and approved by the County Government Finance Review Board.
- B. The provisions of Chapter 190, §18 of the Acts of 1982 are incorporated into this Agreement.

Section 8. Longevity. Effective July 1, 2000, there shall be a program as follows:

- A. Employees with five (5) years of service with the Suffolk County House of Correction but less than ten (10) years - \$350.00
- B. Employees with ten (10) years of service with the Suffolk County House of Correction but less than fifteen (15) years - \$500.00
- C. Employees with fifteen (15) years of service with the Suffolk County House of Correction but less than twenty (20) - \$600.00
- D. Employees with twenty (20) years of service with the Suffolk County House of Correction but less than twenty-five (25) - \$700.00

- E. Employees with twenty-five (25) or more years of service with the Suffolk County House of Correction - \$800.00

Section 9. Weekend Differential. The weekend differential shall be \$1.00 per hour for all regularly-scheduled actual hours worked between the hours of 11:00 PM on Friday and 11:00 PM on Sunday.

Section 10. Shift Differential.

- A. The shift differential shall be \$1.05 per hour for all regularly-scheduled actual hours worked on a night shift.
- B. The term "night shift" shall mean a regular work shift four (4) or more hours of which occur between 7:00 PM on one day and 8:00 AM on the next succeeding day.

Section 11. Public Safety Differential.

- A. Effective July 1, 2000, the public safety differential shall be increased to \$1.30 per hour for employees in grades CO-1, CO-2, and CO-3 for all regularly-scheduled actual hours worked.
- B. Effective July 1, 2000, the public safety differential shall be increased to \$1.54 per hour for employees in grade CO-4 only for all regularly-scheduled actual hours worked.

Section 12. Actual Hours. The definition of "actual hours worked" shall include all regularly-scheduled hours worked and vacation days.

Section 13. The Municipal Employer agrees to contribute at least \$ 8.76 weekly to the Massachusetts Public Employees Fund for dental/eyeglass benefits for bargaining unit members.

Section 14. Fitness Bonus. Employees who annually meet the requirements of the Municipal Employer's voluntary "Wellness and Fitness" program will receive a cash payment of \$ 800.00, payable no later than December 15th each year.

EXHIBIT 1D

A G R E E M E N T

BETWEEN

SUFFOLK COUNTY

AND

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME)

AFL-CIO COUNCIL 93 AND AFFILIATE

SUFFOLK COUNTY HOUSE OF CORRECTION
LOCAL 419

Effective July 1, 2005

Expiring June 30, 2008

LOCAL 419 EXECUTIVE BOARD

MICHAEL SIMPSON
President
TROY SALVETTI
Vice President
DENNIS GUILFOYLE
Secretary
SCOTT SMITH
Treasurer
TOM FLYNN
BRIAN AHERN
BRIAN MCPHERSON
(3) Executive Board Members
BRYAN KAISER
Trustee
DAVID KENEALLY
Sergeant Of arms

LOCAL 419 BARGAINING COMMITTEE

MICHAEL SIMPSON

DENNIS GUILFOYLE

BRYAN KAISER

DAN GRIFFIN

BILL KENNEALLY

CHIEF STEWARD

TOM TUCCI

STEWARD

JOHN KATIKAKIS

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AGREEMENT

THIS AGREEMENT, made under Chapter 150E of the General Laws, by and between the Sheriff of Suffolk County, hereinafter called "the Municipal Employer," and Suffolk County, hereinafter called "the County," and the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, Council 93 and affiliated Suffolk County House of Correction Local 419, all which, jointly and severally, are hereinafter called "the Union."

WITNESSETH

WHEREAS the above-cited statutory provisions grant to employees of political subdivisions of the Commonwealth the right to bargain collectively with their Municipal Employer, and

WHEREAS the parties to this Agreement desire to establish a state of amicable understanding, cooperation and harmony; and

WHEREAS the parties to this Agreement consider themselves mutually responsible to improve the public service through the creation of increased morale and efficiency;

NOW, THEREFORE, In consideration of the mutual promises and agreements herein contained, the parties mutually agree as follows:

**ARTICLE I
EMPLOYEES COVERED BY THIS AGREEMENT**

The Municipal Employer recognizes the Union as the exclusive bargaining representative, for the purpose of collective bargaining relative to wages, hours, and other conditions of employment, of all current employees of the Suffolk County House of Correction (SCHC) in the compensation grades CO-1, CO-1N, CO-2, CO-2N, CO-3, CO-3N, CO-4 and CO-4N.

**ARTICLE II
NON-DISCRIMINATION**

The Municipal Employer and the Union agree not to discriminate in any way against employees covered by this Agreement on account of membership or non-membership in the Union, or on account of race, religion, creed, color, national origin, sex, age, or physical handicap. The parties agree that the concept of affirmative action shall be applied consistent with the terms of this Agreement.

**ARTICLE III
PAYROLL DEDUCTION OF UNION DUES**

In accordance with the provision of G.L. c.180, § 17A (Chapter 740 of the Acts of 1950), accepted by the Suffolk County Commissioners on January 15, 1951, union dues shall be deducted weekly from the salary of each employee who executes and remits to the Municipal Employer a form of authorization for payroll deduction of union dues. Remittance of the aggregate amount of dues deducted shall be made to the Union's Treasurer within twenty-five (25) working days after the month in which dues are deducted.

agrees to develop and implement, during the life of this agreement, a pilot program for allowing officers assigned to posts within the institutional perimeter to dress in the Class C uniform agreed upon by the parties.

- B. Employees hired at any time during the calendar year shall be advanced the allowance payable for such calendar year at time of appointment.
- C. Upon termination of an employee due to retirement or death, the allowance payable for that calendar year will be prorated and paid to him/her, or, in case of his/her death, his/her estate, in the manner provided by law for the payment of vacation pay on death or retirement.

Section 3. The Municipal Employer shall provide the Union with an updated seniority list of all employees covered by this Agreement by January 15th of each calendar year.

- A. A Labor-Management Committee shall be established consisting of three (3) representatives of the union and representatives of the Municipal Employer. The committee shall meet at least every other month to discuss matters of mutual concern. The union shall provide the department with the names of its three (3) representatives (each of whom shall attend all meetings to the extent possible) on this committee, in writing, at least two (2) weeks prior to the first meeting. The union agrees that it will not file any charges of a prohibited practice with the Labor Relations Commission until the issue has been raised and discussed with the committee. All requests for release time shall be presented to the Superintendent of Human Resources at least three (3) business days prior to a scheduled meeting.

- B. The parties agree that issues currently raised at the Health and Safety Committee will be discussed at the Labor-Management Committee, and that the current practice of discussing health and safety issues at the committee prior to filing a grievance on same will continue.

Section 5. The union agrees to form a committee, along with the Municipal Employer and all other affected locals which choose to participate, the purpose of which is to examine and discuss the implications of a merger between Local 419 and Local 1134, each of AFSCME, Council 93, as well as the most efficient means of effectuating the merger.

Section 6. The department and the union agree to form a joint committee to explore the issue of "line of duty" pay.

Section 7. Performance evaluations.

- A. Effective January 1, 2006 an annual employee performance evaluation system shall be implemented using forms agreed upon between the parties. There shall be a separate form for bargaining unit members in grades CO-1, CO-1N, CO-2 and CO-2N, and a separate form for members in grades CO-3, CO-3N, CO-4, and CO-4N. The initial evaluation period shall be calendar year 2006, provided that all supervisors who are required to perform evaluations have been properly trained on evaluation methods.
- B. Performance evaluation forms shall be made available to all employees prior to calendar year 2006. The Superintendent or his designee shall be available at the outset of the implementation of the evaluation process to review criteria with any interested employees.

- C. All employee performance evaluations shall be completed in writing, and all evaluated employees shall be provided the opportunity to sign and comment upon his/her evaluation prior to its placement in the employee's personnel file.
- D. In the event that an employee receives a below expectations rating on any annual evaluation, such employee, upon subsequently receiving three consecutive meets expectations ratings, shall have the below expectations evaluation removed from his/her personnel file. It is understood that disciplinary action shall not be a result of an annual evaluation. It is further understood that annual evaluations shall be used for assessment in the promotional process as defined in Article XXI, section 6 of this Agreement.

- E. It is agreed that there shall be a Performance Evaluation Committee consisting of two (2) representatives of the Union and two (2) representatives of the Department who shall have the option to meet prior to the implementation of the initial evaluation process to consider any mutually agreed upon revisions to the established performance evaluation system. The parties shall also have the option to meet after each subsequent annual evaluation process to mutually agree upon revisions to the established performance evaluation system.

ARTICLE XIX COMPENSATION

Section 1.

A. As of July 1, 2005, the following wage scale is in effect:

	Step 1	Step 2	Step 3	Step 4	Step 5
CO-1	\$ 583.75	\$ 666.80	\$ 754.10	\$ 805.89	\$ 870.38
CO-2	\$ 605.77	\$ 703.39	\$ 803.35	\$ 857.08	\$ 925.64
CO-3	\$ 637.37	\$ 747.69	\$ 866.57	\$ 915.05	\$ 988.25
CO-4	\$ 684.71	\$ 822.50	\$ 961.31	\$ 1009.75	\$ 1090.54
	Step 6	Step 7	Step 8	Step 9	
CO-1	\$ 887.77	\$ 905.52	\$ 923.63	\$ 942.11	
CO-2	\$ 944.15	\$ 963.04	\$ 982.30	\$ 1001.94	
CO-3	\$ 1008.03	\$ 1028.19	\$ 1048.76	\$ 1068.73	
CO-4	\$ 1112.36	\$ 1134.61	\$ 1157.30	\$ 1180.44	

- B. Effective October 1, 2005, the wage scale shall be as follows:**

	Step 1	Step 2	Step 3	Step 4	Step 5
CO-1	\$ 648.47	\$ 733.18	\$ 822.23	\$ 875.05	\$ 940.83
CO-2	\$ 670.93	\$ 770.49	\$ 872.46	\$ 927.27	\$ 997.19
CO-3	\$ 703.16	\$ 815.68	\$ 936.94	\$ 986.39	\$ 1061.06
CO-4	\$ 771.44	\$ 901.78	\$ 1043.37	\$ 1092.78	\$ 1175.19
	Step 6	Step 7	Step 8	Step 9	
CO-1	\$ 958.56	\$ 976.67	\$ 985.14	\$ 1013.99	
CO-2	\$ 1016.07	\$ 1035.34	\$ 1054.99	\$ 1075.02	
CO-3	\$ 1081.23	\$ 1101.79	\$ 1122.77	\$ 1144.16	
CO-4	\$ 1197.44	\$ 1220.13	\$ 1243.28	\$ 1266.88	

Section 8. Longevity. There shall be a program as follows:

- A. Employees with five (5) years of service with the Suffolk County House of Correction but less than ten (10) years - \$350.00
- B. Employees with ten (10) years of service with the Suffolk County House of Correction but less than fifteen (15) years - \$500.00
- C. Employees with fifteen (15) years of service with the Suffolk County House of Correction but less than twenty (20) years - \$600.00
- D. Employees with twenty (20) years of service with the Suffolk County House of Correction but less than twenty-five (25) - \$700.00
- E. Employees with twenty-five (25) or more years of service with the Suffolk County House of Correction - \$800.00

Section 9. Weekend Differential. The weekend differential shall be \$1.00 per hour for all regularly-scheduled actual hours worked between the hours of 11:00 PM on Friday and 11:00 PM on Sunday.

Section 10. Shift Differential.

- A. The shift differential shall be \$1.05 per hour for all regularly-scheduled actual hours worked on a night shift.
- B. The term "night shift" shall mean a regular work shift four (4) or more hours of which occur between 7:00 PM on one day and 8:00 AM on the next succeeding day.
- C. Effective October 1, 2005, this differential shall be eliminated and included in the regular weekly salary of all employees in grades CO-1N, CO-2N, CO-3N and CO-4N scheduled to work the 2:45 - 11:15 PM and 10:45 PM - 7:15 AM shifts.

Section 11. Public Safety Differential.

- A. The public safety differential shall be \$1.30 per hour for employees in grades CO-1, CO-2, and CO-3 for all regularly-scheduled actual hours worked.
- B. The public safety differential shall be \$1.54 per hour for employees in grade CO-4 only for all regularly-scheduled actual hours worked.
- C. Effective October 1, 2005, these differentials shall be included in the regular weekly salary and eliminated.

Section 12. Actual Hours. The definition of "actual hours worked" shall include all regularly-scheduled hours worked and vacation days.

Section 13. The Municipal Employer agrees to contribute at least \$ 8.76 weekly to the Massachusetts Public Employees Fund for dental/glass benefits for bargaining unit members.

Section 14. Fitness Bonus. Employees who annually meet the requirements of the Municipal Employer's voluntary "Wellness and Fitness" program will receive a cash payment of \$ 800.00, payable no later than December 15th each year.

ARTICLE XX UNION BUSINESS

Section 1. Union Representatives.

- A. The Union shall furnish the Office of Employee Relations with a list of officials and the capacity in which they serve.
- B. The Union shall furnish the Office of Employee Relations with the name of the Union steward and alternate for each shift.
- C. Lists shall be furnished to the Office of Employee Relations as soon as practicable after designation and the Union shall as soon as practicable notify the Office of Employee Relations of any changes.

Section 2. Paid Leave of Absence for Union Business. Release time for Union business shall only be considered for the following reasons:

- A. One authorized Union representative, as defined in section 1 above, shall be permitted reasonable time off without loss of pay to represent:
 - 1. Employees upon their request at interviews which may lead to disciplinary action on the premises of the Suffolk County House of Correction, and/or arbitration, Labor Relations Commission, Civil Service Commission or Massachusetts Commission Against Discrimination hearing.
 - 2. Grievants at a hearing on the premises of the institution or at a Step 2, hours in advance to the Superintendent/designee indicating the date, time and destination;
 - 3. Requests for such time off shall be made in writing at least twenty-four (24) hours in advance to the Superintendent/designee indicating the date, time and destination;
 - B. Time-off without loss of pay may be granted for up to five (5) Union members for the purpose of a negotiating committee attending negotiation sessions with the department.
 - C. Prior to the first collective bargaining session, the Union shall furnish the Office of Employee Relations with the names of the negotiating committee members.
 - D. Requests for such leave shall be made in writing at least twenty-four (24) hours in advance to the Superintendent/designee.
 - E. Attendance by employees who are either authorized delegates or alternates at the annual convention of the Massachusetts State Labor Council, the American Federation of State, County and Municipal Employees, AFL-CIO, or the annual convention or conference of the Council 93, AFSCME, AFL-CIO or the AFSCME International Conventions. A list of authorized delegates shall be forwarded by AFSCME to the Office of Employee Relations as far in advance of the date of the convention(s) as possible;
 - F. Witnesses and/or grievants called by the Union to testify only during their regularly scheduled shift at a Step 2 hearing, an arbitration, Labor Relations Commission, Civil Service Commission hearing or Massachusetts Commission Against Discrimination investigation and/or hearing may be granted time off without loss of pay and without loss of benefits. Requests for such leave shall be made in writing at least twenty-four (24) hours in advance to the Superintendent/designee.
 - G. Operating Needs.
 - 1. The Sheriff shall be the sole judge in determining whether release time requested under this Article may have an adverse affect on the operations of the Suffolk County House of Correction.

EXHIBIT 2A



**AGREEMENT
BETWEEN
SUFFOLK COUNTY
AND
AFSCME, COUNCIL 93
LOCALS 3643 and 3967**

Effective: July 1, 2000

Expires: June 30, 2003

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ARTICLE I
EMPLOYEES COVERED BY THIS AGREEMENT

The Municipal Employer recognizes the Union as the exclusive representative, for the purpose of collective bargaining relative to wages, hours, and other conditions of employment, of all employees in the services of the Suffolk County Jail and/or House of Correction in the compensation grades JO-4, JO-5 and CO-5.

ARTICLE II
NON-DISCRIMINATION

Section 1. The Municipal Employer and the Union agree not to discriminate in any way against employees covered by this Agreement on account of membership or non-membership in the Union, union activity, or on account of race, religion, creed, color, national origin, sex, age, physical or mental handicap, sexual preference, parental status, or marital status.

Section 2. The parties agree that the Municipal Employer will not discriminate in any way against employees on account of political activity or lack thereof. The parties further agree that grievances filed pursuant to this section will be arbitrable notwithstanding the provisions of Article VI.

ARTICLE III
PAYROLL DEDUCTION OF UNION DUES

In accordance with the provisions of G.L. c.180, §17A (Chapter 740 of the Acts of 1950), accepted by the County Commissioners on January 15, 1951, union dues shall be deducted weekly from the salary of each employee who executes and remits to the Municipal Employer a form of authorization for payroll deduction of union dues. Remittance of the aggregate amount of dues deducted shall be made to the Union's Treasurer within twenty-five (25) working days after the month in which dues are deducted.

ARTICLE XIX
COMPENSATION

Section 1. Pay scales.

A. Effective July 1, 2000, annual base salary rates shall be as follows:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7
JO-4	\$ 638.87	\$ 756.37	\$ 884.03	\$ 928.58	\$ 1,002.87	\$ 1,022.93	\$ 1,043.39
JO-5	\$ 691.96	\$ 825.79	\$ 971.71	\$ 1,016.27	\$ 1,097.57	\$ 1,119.52	\$ 1,141.91
CO-5	\$ 691.96	\$ 825.79	\$ 971.71	\$ 1,016.27	\$ 1,097.57	\$ 1,119.52	\$ 1,141.91

B. Effective September 2, 2000, the annual base salary rates shall be as follows, and employees who, as of September 2, 2000, have a minimum of 52 weeks of creditable service at Step 7 shall be placed at Step 8:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8
JO-4	\$ 638.87	\$ 756.37	\$ 884.03	\$ 928.58	\$ 1,002.87	\$ 1,022.93	\$ 1,043.39	\$ 1,064.26
JO-5	\$ 691.96	\$ 825.79	\$ 971.71	\$ 1,016.27	\$ 1,097.57	\$ 1,119.52	\$ 1,141.91	\$ 1,164.75
CO-5	\$ 691.96	\$ 825.79	\$ 971.71	\$ 1,016.27	\$ 1,097.57	\$ 1,119.52	\$ 1,141.91	\$ 1,164.75

C. Effective July 7, 2001, annual base salary rates shall be as follows:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8
JO-4	\$ 654.84	\$ 775.28	\$ 906.13	\$ 951.79	\$ 1,027.94	\$ 1,048.51	\$ 1,069.47	\$ 1,090.86
JO-5	\$ 709.26	\$ 846.44	\$ 996.01	\$ 1,041.68	\$ 1,125.01	\$ 1,147.51	\$ 1,170.46	\$ 1,193.87
CO-5	\$ 709.26	\$ 846.44	\$ 996.01	\$ 1,041.68	\$ 1,125.01	\$ 1,147.51	\$ 1,170.46	\$ 1,193.87

D. Effective September 1, 2001, annual base salary rates shall be as follows, and employees who, as of September 1, 2001, have a minimum of 52 weeks of creditable service at Step 8 shall be placed at Step 9:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9
JO-4	\$ 654.84	\$ 775.28	\$ 906.13	\$ 951.79	\$ 1,027.94	\$ 1,048.51	\$ 1,069.47	\$ 1,090.86	\$ 1,112.68
JO-5	\$ 709.26	\$ 846.44	\$ 996.01	\$ 1,041.68	\$ 1,125.01	\$ 1,147.51	\$ 1,170.46	\$ 1,193.87	\$ 1,217.74
CO-5	\$ 709.26	\$ 846.44	\$ 996.01	\$ 1,041.68	\$ 1,125.01	\$ 1,147.51	\$ 1,170.46	\$ 1,193.87	\$ 1,217.74

E. Effective July 6, 2002, annual base salary rates shall be as follows:

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9
JO-4	\$ 674.48	\$ 798.54	\$ 933.31	\$ 980.34	\$1,058.78	\$1,079.96	\$1,101.56	\$ 1,123.59	\$1,146.06
JO-5	\$ 730.54	\$ 871.83	\$1,025.89	\$1,072.93	\$1,158.76	\$1,181.93	\$1,205.57	\$ 1,229.68	\$1,254.28
CO-5	\$ 730.54	\$ 871.83	\$1,025.89	\$1,072.93	\$1,158.76	\$1,181.93	\$1,205.57	\$ 1,229.68	\$1,254.28

Section 2. Officers covered by this Agreement who have ten (10) years of service shall be placed in the maximum of the grade to which they are permanently promoted.

Section 3. Mileage allowance shall be thirty-three cents (.33) per mile.

Section 4. After completion of each year of service in the grade for which he/she is hired or to which he/she is promoted, employees will automatically advance to the next highest step in said pay grade.

Section 5.

A. The County's contribution to group hospitalization premiums shall be:

1. 75% of total monthly premiums for the indemnity plan selected by the employer, including Master medical or equivalent coverage;
2. 90% of the total monthly premium for all approved and authorized health maintenance organizations.

B. Should the county develop an RFP for an indemnity plan other than BC/BS Master Medical, it shall meet with the union in advance of the advertisement of said RFP. The meetings shall be for the purpose of soliciting comments and suggestions from the union prior to finalizing the RFP. The union shall be furnished a copy of the finalized RFP.

Section 6. Financing.

- A. No moneys shall be paid under this Article unless and until the funds necessary to implement this Agreement have been appropriated by the County Government Finance Review Board.
- B. The provisions of Chapter 190, §18 of the Acts of 1982, are incorporated into this Agreement.

Section 7. Longevity.

The longevity program shall be as follows:

- A. Employees with five (5) years of service with the Suffolk County Jail or House of Correction but less than ten (10) years - \$364.00.
- B. Employees with ten (10) years of service with the Suffolk County Jail or House of Correction but less than fifteen (15) years - \$520.00.
- C. Employees with fifteen (15) years of service with the Suffolk County Jail or House of Correction but less than twenty (20) years - \$728.00.
- D. Employees with twenty (20) years of service with the Suffolk County Jail or House of Correction but less than twenty five (25) years -\$884.00.
- E. Employees with twenty-five (25) or more years of service with the Suffolk County Jail or House of Correction - \$1040.00.
- F. Such payment shall be made to employees on the anniversary dates of their employment with the Suffolk County Jail or House of Correction.

Section 8. Weekend Differential. There shall be a weekend differential of \$1.00 for all regularly-scheduled hours actually worked between the hours of 12:00 midnight on Friday and 12:00 midnight on Sunday.

Section 9. Shift Differential.

- A. There shall be a shift differential of \$1.05 for all regularly scheduled hours actually worked on a night shift.
- B. The term "night shift" shall mean a regular work shift four or more hours of which occur between 6:00 p.m. one day and 8:00 a.m. on the next succeeding day.

Section 10. Supervisory Differentials.

- A. Shift Commander. There shall be a \$1.00 differential paid to shift commanders for all regularly-scheduled hours actually worked.
- B. Department Head. There shall be a \$0.15 differential paid to department heads for all regularly-scheduled hours actually worked.
- C. Consistent with the current practice, the Sheriff shall retain the absolute unfettered discretion to select the shift commander and department heads.

Section 11. Public Safety Differential. In addition to any other regular or premium compensation to which employees are entitled, all members of the bargaining unit shall receive a public safety differential in the amount of \$1.54 per regularly-scheduled hour actually worked.

Section 12. Educational Differential. Effective July 1, 2000, there shall be an educational incentive differential for those bargaining unit members with degrees from accredited colleges and universities approved by the Sheriff as follows:

- A. Associates Degree - \$.72/ hour for all regularly-scheduled actual hours worked
- B. Bachelors Degree - \$1.20/ hour for all regularly-scheduled actual hours worked
- C. Masters Degree - \$1.44/ hour for all regularly-scheduled actual hours worked

Section 13. For purposes of sections 8, 9, 10, 11, and 12 of this Article and section 3 of Article XVIII of this agreement, the term "actual work" shall include all regularly-scheduled hours worked and vacation days.

Section 14. Dental/Vision Care. The present level of dental/eyeglass benefits will be maintained for bargaining unit members.

Section 15. Fitness Bonus.

- A. Employees who annually meet the requirements of the Municipal Employer's voluntary "Wellness and Fitness" program will receive a cash payment of \$ 800.00, payable no later than December 15th each year.
- B. Requests for alternative fitness requirements for medical reasons will be given fair consideration on an individual basis.

Section 16. Tuition Remission. The Municipal Employer shall establish a program for tuition remission in accordance with existing state guidelines.

ARTICLE XX
PROBATION AND PROMOTION

Section 1. For all employees hired after the effective date of this agreement, the regular probationary period shall be one year of active service from the date of appointment by the Municipal Employer.

EXHIBIT 2B

AGREEMENT

BETWEEN

SUFFOLK COUNTY

AND

AFSCME, COUNCIL 93

LOCAL 3643

SUFFOLK COUNTY JAIL EMPLOYEES

Effective: July 1, 1998

Expires: June 30, 2000

ARTICLE XIX.

COMPENSATION

Section 1. (A) Effective July 1, 1998, annual base salary rates shall be as follows:

Grade	Step 1	Step 2	Step 3	Step 4	Step 5
JO-4	\$602.19	\$712.96	\$833.28	\$875.27	\$945.30
JO-5	\$652.25	\$778.39	\$915.93	\$957.93	\$1034.56

(B) Effective September 2, 1998, the annual base salary rates shall be as follows, and employees who, as of September 2, 1998, have a minimum of 52 weeks of creditable service at Step 5 shall be placed at Step 6:

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
JO-4	\$602.19	\$712.95	\$834.21	\$875.27	\$945.30	\$964.21
JO-5	\$652.25	\$778.39	\$915.93	\$957.93	\$1034.56	\$1055.25

C) Effective July 3, 1999, annual base salary rates shall be as follows:

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
JO-4	\$620.26	\$734.34	\$858.28	\$901.53	\$973.66	\$993.14
JO-5	\$671.81	\$801.74	\$943.41	\$986.67	\$1065.60	\$1086.91

(D) Effective September 4, 1999, annual base salary rates shall be as follows, and employees who, as of September 4, 1999, have a minimum of 52 weeks of creditable service at Step 6 shall be placed at Step 7:

Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
JO-4	\$620.26	\$734.34	\$858.28	\$901.53	\$973.66	\$993.14	\$1013.00
JO-5	\$671.81	\$801.74	\$943.41	\$986.67	\$1065.60	\$1086.91	\$1108.65

Section 2. Every employee holding a position classified in a grade with the prefix "JO" shall, upon completion of each year of service in the position, be advanced to the rate specified for the grade of the position in the next numerically numbered column, if any, for said grade.

Section 3. Jail Officers covered by this Agreement who have ten (10) years of service shall be placed in the maximum of the grade to which they are provisionally, as well as permanently, promoted.

Section 4. Mileage allowance shall be thirty cents (.30) per mile.

Section 5. An employee with not less than one year of service who is not a permanent employee shall be advanced to the step next higher in his pay grade, and thereafter shall automatically advance to the next higher step, if any, unless he fails a Civil Service examination or fails to take a scheduled Civil Service examination without reasonable cause. An employee who on January 1, 1978 has less than one year of service or who is hired thereafter shall receive step-rates under this provision, except that his anniversary date shall be date of hire.

Section 6. The County's contribution to group hospitalization premiums shall be:

- a) 75% of total monthly premiums for the indemnity plan selected by the employer, including Master medical or equivalent coverage;
- (b) 90% of the total monthly premium for all approved and authorized health maintenance organizations.

Should the county develop an RFP for an indemnity plan other than BC/BS Master Medical, it shall meet with the union in advance of the advertisement of said RFP. The meetings shall be for the purpose of soliciting comments and suggestions from the union prior to finalizing the RFP. The union shall be furnished a copy of the finalized RFP.

Section 7. Financing.

- (a) No moneys shall be paid under this Article unless and until the funds necessary to implement this Agreement have been appropriated by the County Government Finance Review Board.
- (b) The provisions of Chapter 190, §18 of the Acts of 1982, are incorporated into this Agreement.

Section 8. Longevity.

Effective January 1, 1999, the longevity program shall be as follows:

- (a) employees with five (5) years of service with the Suffolk County Sheriff's Department but less than ten (10) years - \$300.00.
- (b) Employees with ten (10) years of service with the Suffolk County Sheriff's Department but less than fifteen (15) years - \$500.00.
- (c) Employees with fifteen (15) years of service with the Suffolk County Sheriff's Department but less than twenty (20) years - \$700.00.
- (d) Employees with twenty (20) years of service with the Suffolk County Sheriff's Department but less than twenty five (25) years -\$850.00.

(e) Employees with twenty-five (25) or more years of service with the Suffolk County Sheriff's Department - \$1000.00.

Such payment shall be made to employees on the anniversary dates of their employment with the Suffolk County Jail.

Section 9. Weekend Differential. Effective July 3, 1999, there shall be a weekend differential of \$1.06 for all regularly scheduled hours actually worked between the hours of 12:00 midnight on Friday and 12:00 midnight on Sunday.

Section 10. Shift Differential. Effective July 3, 1999, there shall be a shift differential of \$1.11 for all regularly scheduled hours actually worked on a night shift. The term "night shift" shall mean a regular work shift four or more hours of which occur between 6:00 p.m. one day and 8:00 a.m. on the next succeeding day.

Section 11. Supervisory Differentials.

(a) Shift Commander Differential. There shall be a \$1.00 differential paid to shift commanders for all regularly-scheduled hours actually worked.

(b) Department Head Differential. There shall be a \$0.15 differential paid to department heads for all regularly-scheduled hours actually worked.

(c) Consistent with the current practice the Sheriff shall retain the absolute unfettered discretion to select the shift commander and department heads.

Section 12. Public Safety Differential. Effective July 3, 1999, in addition to any other regular or premium compensation to which employees are entitled, all members of the bargaining unit shall receive a public safety differential in the amount of \$1.33 per regularly scheduled hour actually worked.

Section 13. Educational Differential. Effective July 3, 1999, there shall be an educational incentive differential for those bargaining unit members with documented degrees in the fields of Criminal Justice or Law Enforcement from a mutually-agreed upon list of colleges and universities as follows:

- (a) Associates Degree - \$.45/ hour for all regularly-scheduled actual hours worked
- (b) Bachelors Degree - \$.60/ hour for all regularly-scheduled actual hours worked
- (c) Masters Degree - \$.75/ hour for all regularly-scheduled actual hours worked

Section 14. For purposes of sections 9, 10, 11, 13 and 14 of this Article and section 4 of Article XVIII of this agreement, the term "actual work" shall include all regularly- scheduled hours worked and vacation days.

Section 15. Dental/Vision Care. The present level of dental/eyeglass benefits will be maintained for bargaining unit members.

ARTICLE XX.

PROBATION AND PROMOTION

Section 1. For all employees hired after the effective date of this agreement, the regular probationary period shall be one year of active service from the date of appointment by the Municipal Employer.

Section 2. Notice of promotional vacancy in a position covered by this agreement shall be posted for a period of ten (10) consecutive days. Any employee who is eligible, pursuant to Section 3 of this Article, and interested in filling the vacancy shall apply therefor to the Sheriff through the Director of Personnel.

EXHIBIT 3

MAROTTA

VERSUS

SUFFOLK COUNTY

TRANSCRIPT AND WORD INDEX FOR THE DEPOSITION OF:

MICHAEL CAWLEY

THURSDAY, JUNE 7, 2007

Leavitt Reporting, Inc.

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Weymouth, MA 02189

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VOLUME: 1
 PAGES: 1 - 31
 EXHIBITS: None

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS

* * * * *
 GIUSEPPE MAROTTA, et al,
 Plaintiffs,
 CA# 05-10032-MEL

vs.

SUFFOLK COUNTY,
 Defendant.

* * * * *
 DEPOSITION OF MICHAEL CAWLEY, a witness
 called on behalf of the Plaintiffs, pursuant to
 Massachusetts Rules of Civil Procedure, before
 Carolyn McGill, a Shorthand Reporter and Notary
 Public in and for the Commonwealth of Massachusetts,
 at the Law Offices of Glynn, Landry, Harrington and
 Rice, LLP, 10 Forbes Road, Braintree, Massachusetts
 on Thursday, June 7, 2007 commencing at 10:00 a.m.

DEPONENT PAGE

Michael Cawley

Examination by Mr. Rice

4

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2

4

APPEARANCES

1 P-R-O-C-E-E-D-I-N-G-S

4 GLYNN, LANDRY, HARRINGTON AND RICE, LLP
 5 (By Daniel W. Rice, Esq.)
 6 10 Forbes Road,
 7 Braintree, Ma 02184,
 8 On behalf of the Plaintiffs.

3 STIPULATIONS

4 It was stipulated and agreed by
 5 and between counsel for the respective parties
 6 that the witness will read and sign the
 7 deposition transcript within thirty days of
 8 receipt of the transcript. And the sealing,
 9 filing and certification thereof are waived.

10 It was further stipulated and
 11 agreed that all objections, except as to the
 12 form of the question, shall be reserved until
 13 the time of trial.

14 Michael Cawley, having been
 15 satisfactorily identified by the production of
 16 his driver's license and duly sworn by the
 17 Notary Public, called on behalf of the
 18 Plaintiffs, on oath deposes and says as follows:

19
 20
 21 MR. HOMSY: For the record, I
 22 represent Michael Cawley. You can have the depo
 23 sent to me and I will send it to him to read,

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1 sign, waive notary. Can we have thirty days for
2 that? Is that okay?

3 MR. RICE: Well, for signing
4 that's not a problem. We're running into some
5 deadlines here --

6 (Discussion off the record).

7 **Examination by Mr. Rice:**

8 Q. Could you state your name please?

9 A. Michael Cawley.

10 Q. Mr. Cawley, at some point were you
11 employed by the Suffolk County Sheriff's
12 Department?

13 A. Yes, I was.

14 Q. When were you employed there?

15 A. 1989 to 2001.

16 Q. What jobs did you have with the
17 Sheriff's Department?

18 A. I started as a Senior Administrative
19 Assistant in the Budget Department and I was
20 Assistant Director of Personnel and then
21 Director of Personnel.

22 Q. When were you the Director of
23 Personnel?

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6

1 A. From 1997 to 2001.

2 Q. Are you familiar with the federal law
3 known as the Fair Labor Standards Act?

4 A. Yes.

5 Q. Have you received any training in the
6 Fair Labor Standards Act?

7 A. I believe I have, yes.

8 Q. Had you received that before you were
9 working in Personnel at the Sheriff's
10 Department?

11 A. Actually, I think I may have attended
12 a seminar on it after the Sheriff's Department.

13 Q. Were you involved in payroll issues
14 when you were working for the Sheriff's
15 Department?

16 A. Yes, I was.

17 Q. What was your involvement with payroll
18 issues?

19 A. As the Director of Personnel we had
20 responsibility for implementing and processing
21 the payroll on a weekly basis. I had an
22 Assistant Director report into me who was
23 primarily responsible for the payroll.

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1 Q. Now, the City of Boston played some
2 role in the payroll for Suffolk Sheriff's
3 Department employees?

4 A. Sure.

5 Q. What role did it play?

6 A. We actually submitted the payroll to
7 the City of Boston and it may have been the
8 Auditing Department, I'm not exactly sure which
9 department, and they would actually generate the
10 paychecks. And we would go to City Hall and
11 pick up the paychecks and bring them back to the
12 Sheriff's Department.

13 Q. Did the Sheriff's Department utilize
14 software?

15 A. Yes, we did.

16 Q. What was the software that you used?

17 A. PeopleSoft.

18 Q. PeopleSoft wasn't always in use at the
19 Sheriff's Department, was it?

20 A. No. We implemented PeopleSoft in 2000
21 I believe.

22 Q. Was it the Sheriff's Department that
23 implemented that or was it the City?

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8

1 A. It was both actually. It was a city
2 wide initiative and the Sheriff's Department was
3 required to participate being part of the City.

4 Q. What role did you play if any in the
5 implementation of PeopleSoft?

6 A. I attended meetings with the City of
7 Boston. It was called the BAISE Project so I
8 attended meetings. We supplied data regarding
9 payroll issues, contracts and things of that
10 nature just to get the payroll rules squared
11 away.

12 Q. Some of the employees who work for the
13 Sheriff's Department are unionized?

14 A. That's correct.

15 Q. While you were the Director of
16 Personnel were the corrections officers
17 unionized?

18 A. Yes, they were.

19 Q. Do you remember what the local unions
20 were and who they represented?

21 A. I know that Local 419 was the House of
22 Correction officers and Local 1134 I believe was
23 the jail officers.

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1 Q. How about superior officers?
 2 A. I know they were represented. The
 3 Lieutenants and the Captains had a separate
 4 union. I don't recall the number of the union.

5 Q. Did each of these unions have
 6 collective bargaining agreements with the
 7 Sheriff's Department?

8 A. Yes, they did.

9 Q. In these collective bargaining
 10 agreements were wages addressed?

11 A. Yes.

12 Q. Are you familiar with the term
 13 differentials?

14 A. Yes.

15 Q. As they relate to the collective
 16 bargaining agreement and wages are you familiar
 17 with that?

18 A. Yes.

19 Q. What are the differentials?

20 A. The differentials were part of the
 21 contract for hours actually worked by the
 22 correction officers. So uniform differential
 23 for example, and I believe it was the based on

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1 hours actually worked, I'm not a hundred percent
 2 certain, so if an officer worked X number of
 3 hours in the week they'd receive a uniform
 4 differential for each of those hours worked.

5 Q. There was a differential for example
 6 for public safety?

7 A. I don't recall that one but I know
 8 there was an overnight differential. I remember
 9 the uniform differential but I don't remember --
 10 I don't recall the public safety one.

11 Q. Educational incentives, were there
 12 differentials for those?

13 A. You know, I'm not really sure if there
 14 were for education. I thought we had a -- I
 15 can't remember. I know there was something
 16 going on with the education but I'm not sure if
 17 it was in the format of differentials.

18 Q. Now, you testified earlier that
 19 PeopleSoft was implemented while you were the
 20 Director of Personnel?

21 A. Yes.

22 Q. After PeopleSoft was implemented did
 23 the manner in which differentials were

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1 calculated into overtime payments for Sheriff's
 2 Department employees change?
 3 A. I don't think so. I don't know if --
 4 if the differentials -- I'm not sure if the
 5 differentials were actually implemented in the
 6 first contract, if they were prior to the actual
 7 paper payroll that we used to do.

8 MR. RICE: If you don't object do
 9 you want to just use the Yotts exhibit?

10 MR. HOMSY: Yeah, why don't we.
 11 Q. I'm going to give you a few minutes to
 12 read this over.

13 MR. RICE: Just for the record,
 14 I'm going to identify it as Exhibit Three from
 15 Mr. Yotts' deposition yesterday.

16 A. Okay. Bringing back a lot of
 17 memories.

18 Q. First of all, this is a memo to --
 19 it's in the top section which is to Charles
 20 Abate, Employee Relations from Michael J.
 21 Cawley, Director of Personnel. Do you see where
 22 it says that?

23 A. Yes.

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12

1 Q. Do you recognize this memo?

2 A. Yes.

3 Q. Did you write it?

4 A. I did.

5 Q. The date is October 5, 2000?

6 A. Sounds right.

7 Q. Do you remember writing this memo?

8 A. Yes.

9 Q. In writing this memo did you review
 10 any sources or reference books?

11 A. I would imagine that I did. I don't
 12 know exactly if I did.

13 Q. As the Director of Personnel working
 14 at the Sheriff's Department did you have a
 15 library of some kind dealing with federal and
 16 state employment laws?

17 A. Yes.

18 Q. And you had access to it?

19 A. I did.

20 Q. In this memo there are references,
 21 would you agree, to requirements of the Fair
 22 Labor Standards Act?

23 A. Yes.

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1 Q. And do you recall looking at any
 2 reference materials of any kind that were
 3 available to you to glean the legal standards
 4 that are in this memo?

5 A. I don't recall. It was eight years
 6 ago, seven years ago. I don't recall
 7 specifically looking at it but I would imagine
 8 that I would. On the bottom paragraph on the
 9 first page it says FLSA states that until an
 10 employee. So I would imagine that I referenced
 11 some material.

12 MR. HOMSY: Don't guess on your
 13 answer. He doesn't want you to guess.

14 Q. Did you, while you were the Director
 15 of Personnel, did you write any other memos
 16 about the Fair Labor Standards Act?

17 A. Not that I know of.

18 Q. Do you know what it was that
 19 occasioned you to write this memo?

20 A. I would imagine the issue that the
 21 memo talks about, the calculation of overtime
 22 regarding PeopleSoft.

23 Q. Does the memo refresh your memory as
 LEAVITT REPORTING, INC.

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1 to whether or not there was a controversy in or
 2 around October of 2000 about how overtime rates
 3 were being calculated for Sheriff's Department
 4 employees after the conversion to PeopleSoft?

5 A. Yeah, I think there were some concerns
 6 regarding some of the union members that brought
 7 it to our attention.

8 Q. What were those concerns?

9 A. That the overtime calculations were
 10 incorrect.

11 Q. Are you familiar with the term
 12 overtime rate of pay?

13 A. Yes.

14 Q. As you sit here today and maybe having
 15 looked at this memo, what do you understand that
 16 to be, overtime rate of pay?

17 A. Overtime rate of pay is the rate of
 18 pay paid to employees who work in excess of
 19 forty hours a week.

20 Q. Under the Fair Labor Standards Act is
 21 the overtime rate of pay supposed to include
 22 wage differentials?

23 A. I believe so, yes.

LEAVITT REPORTING, INC.

1 Q. Prior to the conversion to PeopleSoft
 2 were those wage differentials included in other
 3 overtime payments?

4 A. Yes, they were.

5 Q. After the conversion to PeopleSoft
 6 were the wage differentials included in the
 7 calculation of overtime?

8 A. I do not believe so.

9 Q. Do you know why that was the case?

10 A. From my understanding it was a
 11 decision made by the BAISE Project managers if
 12 you will.

13 Q. You can clear up a huge issue in this
 14 case if you can tell us what BAISE stands for?

15 A. I can't. Boston Administrative
 16 Information Systems something. I forgot to be
 17 honest with you.

18 Q. So what is your understanding as to
 19 how BAISE --

20 A. This is my understanding. We
 21 submitted the payroll to the City of Boston.
 22 The City of Boston was implementing the city
 23 wide BAISE Project implementing PeopleSoft in
 LEAVITT REPORTING, INC.

16

1 the year 2000.

2 So we had meetings with
 3 representatives of the City of Boston as did
 4 every city department and provided them with the
 5 bargaining unit contracts and the pay rules for
 6 each of those. And then the programmers were
 7 implementing or programing the calculations
 8 necessary to properly pay the various employees.

9 Q. Was it your opinion at the time that
 10 you wrote this memo that the payment of overtime
 11 without including differentials after the
 12 implementation of PeopleSoft was a violation of
 13 the Fair Labor Standards Act?

14 A. I don't know if I'd consider it a
 15 violation of the Fair Labor Standards Act. It
 16 was more of a change in policy or our behalf and
 17 I just wanted to get some clarification and
 18 knowledge out to the folks involved as to what
 19 we were actually doing.

20 Q. Well, it's your testimony that the
 21 Fair Labor Standards Act requires wage
 22 differentials to be included in overtime
 23 payments?

LEAVITT REPORTING, INC.

1 A. Correct.
 2 Q. And are you aware of any provisions of
 3 the Fair Labor Standards Act now, or actually
 4 let's ask this question.

5 At the time you wrote this memo
 6 were you aware of any provision under the Fair
 7 Labor Standards Act that would have excepted the
 8 Sheriff's Department from including wage
 9 differentials in the payment of overtime?

10 A. That would have excepted the fact that
 11 the Sheriff's Department is excluding
 12 differential in the overtime?

13 Q. Yeah. It would have made it all right
 14 not to include the wage differentials in the
 15 overtime pay?

16 A. There was nothing I was aware of that
 17 would allow that.

18 Q. But you were aware of a provision that
 19 required it to do so?

20 A. It was my understanding that the FLSA
 21 did require it to do so, yes.

22 Q. Now, in the second full paragraph of
 23 the memo you use the term FLSA rate, correct?

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18

1 A. Yes.

2 Q. That's referring to the practice of
 3 paying overtime before the conversion to
 4 PeopleSoft in October of 1999?

5 A. Yeah. The FLSA rate was the same
 6 before and after the PeopleSoft. The definition
 7 is the same.

8 Q. From this paragraph was it the case
 9 that the Sheriff's Department would provide the
 10 FLSA rate of the employees who worked for it on
 11 an overtime disk and send it to City Hall?

12 A. Yes.

13 Q. Did that change after the conversion
 14 to PeopleSoft, that practice of sending the rate
 15 on the OT disk?

16 A. Yes, it did.

17 Q. How did it change?

18 A. There was no longer a disk to be sent
 19 up to City Hall because the calculations were
 20 completed by PeopleSoft.

21 Q. Prior to the conversion how was the
 22 FLSA rate determined?

23 A. The software that we had which was
 LEAVITT REPORTING, INC.

1 DataEase which I had forgotten about until I
 2 read this memo, calculated the overtime rate
 3 based on the differentials that were paid for
 4 the particular week in question.

5 Q. And in your notes section on this
 6 first page you stated in writing back in October
 7 of 2000 what you just stated?

8 A. Yes.

9 Q. It should be noted that the intent of
 10 Dataease calculations was to include the amount
 11 employees earned in differentials into the OT
 12 rate paid?

13 A. Yes.

14 Q. That was meant to comply with the Fair
 15 Labor Standards Act?

16 A. Correct.

17 Q. Now, on the second page in the second
 18 section in the last paragraph starting with the
 19 phrase in my opinion --

20 A. Uh-huh.

21 Q. You state that in my opinion the City
 22 of Boston came to the conclusion that employees
 23 were most likely being over paid by using the

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1 flat 1.5 rate. The City is willing to overlook
 2 that added expense in exchange for not adhering
 3 to the extensive guidelines to fully implement
 4 FLSA. Fully implementing the FLSA guidelines
 5 would be an administrative and logistical
 6 nightmare for the BAISE Project. I read that
 7 accurately, right?

8 A. Yes.

9 Q. What was your opinion as set forth in
 10 that paragraph based on?

11 A. It was just conversations that I had
 12 with people within the BAISE Project.

13 Q. Now, do you know as you sit here today
 14 whether or not the City changed the way that it
 15 was calculating overtime payments?

16 A. I don't. I recall there was a suit
 17 filed against the City but I don't know what the
 18 result was.

19 Q. Is it your understanding that that
 20 suit related to a violation of the Fair Labor
 21 Standards Act in not including the differentials
 22 in the overtime payments?

23 A. It's just based on conversations that
 LEAVITT REPORTING, INC.

1 I have had since I left the Department with
 2 folks that it was just based on the FLSA
 3 calculation.

4 Q. Now on the third page starting
 5 where -- I'm referring to where it says Option
 6 2.

7 A. Uh-huh.

8 Q. It states; follow the strict
 9 guidelines of the FLSA in calculating OT rates.
 10 Under this scenario, the OT rate would include
 11 the regular wages and all differentials. The
 12 wellness money would also have to be included in
 13 this rate. And you wrote that?

14 A. Yes.

15 Q. Were you stating there that you
 16 understood that the Fair Labor Standards Act
 17 required that the overtime rates of the
 18 employees include their wage differentials?

19 A. Yes.

20 Q. At the time you wrote that memo were
 21 you under the impression that there was some
 22 distinction between strict guidelines of the
 23 FLSA and something along the lines of permissive

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22

1 guidelines?

2 A. I'm not really sure to be honest with
 3 you what my thinking was regarding that
 4 terminology.

5 Q. Is it fair to say that what you're
 6 stating here, even with the modifier strict
 7 guidelines, is actually what the Fair Labor
 8 Standards Act provides with respect to
 9 calculating overtime rates that they must
 10 include wage differentials?

11 A. What's the question?

12 Q. I'm sorry. Is it fair to say in
 13 writing the first sentence in the paragraph,
 14 we're referring to Option 2, that you wrote this
 15 understanding that the Fair Labor Standards Act
 16 required differentials to be included in the
 17 calculation of overtime rates?

18 A. Is it fair to say that it was my
 19 understanding that the FLSA required the
 20 differentials? Yes.

21 Q. Now, you submitted this memo to Mr.
 22 Abate, Mr. Yotts and Mr. Gaisford?

23 A. Yes.

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1 Q. Should that be Gaisford?

2 A. No, it's Gaisford.
 3 Q. Did you have conversation with any of
 4 those individuals after you submitted the memo
 5 about it?

6 A. I am sure I did.

7 Q. Did you have any conversations with
 8 any representatives of the union about the
 9 non-inclusion we'll call it of the differentials
 10 in the overtime rate after you wrote this memo?

11 A. To be honest with you I'm not too
 12 sure.

13 Q. Do you have any recollection of the
 14 union filing a prohibited practice charge with
 15 the Labor Relations Commission alleging that the
 16 City had violated the state's public employee
 17 collective bargaining law by not including the
 18 differentials in their overtime rates?

19 A. I don't remember that specifically. I
 20 honestly don't remember if that occurred while I
 21 was still there or after I had left.

22 Q. I'm sorry. I forget when you left.

23 A. 2001. January of 2001.

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24

1 Q. Now, prior to the time you left is it
 2 fair to say that the Sheriff's Department did
 3 not include the differentials when coming up
 4 with the overtime rates of pay for the Sheriff's
 5 Department employees?

6 A. Under PeopleSoft, yes.

7 Q. Who decided not to if you know?

8 A. Again, it's my understanding that it
 9 was the BAISE Project and people that developed
 10 the programs that made that decision.

11 Q. What's your understanding based on?

12 A. It's because we provided the BAISE

13 Project with the contracts and the wage
 14 information and differential information. And
 15 in their calculating or their programing the
 16 PeopleSoft payroll software, for whatever
 17 reason, they did not calculate or they did not
 18 allow the system to calculate the differentials
 19 into the overtime calculation.

20 Q. Did it ever occur to you during the
 21 time you were considering this issue that both
 22 the Sheriff's Department and employees might be
 23 better off if the Fair Labor Standards Act

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1 requirement that differentials be included in
 2 considering and coming up with an employee's
 3 overtime rate was not followed?

4 A. Did it ever -- I'm sorry.

5 Q. Well, did it ever occur to you that it
 6 might be preferable not to include the wage
 7 differentials in the overtime rate?

8 A. Preferable in what sense?

9 Q. Again, let's turn to your memo.

10 A. Yeah.

11 Q. You give recommendations in the memo,
 12 right?

13 A. Yes.

14 Q. And your first one is entitled Option
 15 1. That's on the second page.

16 A. Uh-huh.

17 Q. And the bullet point or after Option 1
 18 it states continue to calculate the overtime
 19 rate at 1.5 times the regular rate. That would
 20 benefit both the employees as well as the
 21 department. It does say that, correct?

22 A. Yeah. Where is that?

23 Q. I'm sorry. It's on the second page
 LEAVITT REPORTING, INC.

26

1 right there.

2 A. Okay.

3 Q. First of all, before we get into the
 4 questions, does this refresh your memory as to
 5 what the overtime payments to Sheriff's
 6 Department employees were being based on at the
 7 time you wrote the memo?

8 A. Yes.

9 Q. It was based on their regular rate of
 10 pay, right?

11 A. Yes.

12 Q. And by regular rate of pay what you
 13 mean there is their base pay not including any
 14 wage differentials that might have been required
 15 by the various collective bargaining agreements?

16 A. Yes.

17 Q. Now, in your recommendations, your
 18 first recommendation as I just read was to
 19 continue to pay employees overtime based on
 20 their regular rate of pay without considering
 21 the differentials, correct?

22 A. Correct.

23 Q. Then you state your rationale for the
 LEAVITT REPORTING, INC.

1 employees benefit and the Department's benefit
 2 for continuing to do it that way?

3 A. Uh-huh.

4 Q. Without going through what you espouse
 5 in your memo here, did you have conversations in
 6 which you further elaborated on your belief of
 7 these benefits with members of the Department?

8 A. I am sure I had conversations
 9 regarding them but I don't specifically remember
 10 any particular conversation.

11 Q. Did anybody who worked for the
 12 Department ever tell you that it had opted to go
 13 along with your recommendation set forth under
 14 Option 1 in your memo?

15 A. I don't remember. I'm totally being
 16 honest. I don't remember somebody saying this
 17 is what we're going to do going forward. I'm
 18 assuming somebody would have told me that. But
 19 I honestly don't remember any particular
 20 conversation regarding that.

21 Q. In fact, while you were there and
 22 after you wrote the memo, the Department did
 23 continue to calculate the overtime rate at one
 LEAVITT REPORTING, INC.

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1 and a half times the regular rate, correct?

2 A. Correct.

3 MR. HOMSY: When you're saying
 4 department you mean the Sheriff's Department?

5 MR. RICE: Sheriff's Department.

6 A. Yes.

7 Q. The Sheriff's Department continued to
 8 do that, correct?

9 A. They did, yes.

10 Q. Were you involved yourself in any
 11 attempt to get the union to agree to go along
 12 with Option 1?

13 A. I don't believe so. I don't recall if
 14 I was to be honest with you. My interaction
 15 with the union was somewhat limited because they
 16 dealt with Employee Relations.

17 Q. Turning to Option 2, you state as one
 18 of the benefits that the Department would
 19 finally be in full compliance with the FLSA?

20 A. Yes.

21 MR. RICE: I think I might be done
 22 here.

23 Q. Were you ever involved in any attempt
 LEAVITT REPORTING, INC.

1 to have the City of Boston adjust PeopleSoft so
2 that the wage differentials would be included in
3 the overtime rate?

4 A. You know, I recall having
5 conversations with people with the City of
6 Boston but I don't know -- I'm not sure if it
7 was handled -- I think that's something that
8 Tom Yotts would have had the conversation with
9 because he was on the same level with Sally
10 Glora I believe who was there at the time.

11 Q. Do you know someone named Maura
12 McDonough?

13 A. Yes, I do.

14 Q. Do you know where she's employed now?

15 A. Comcast.

16 Q. Do you know where she lives?

17 A. I believe Charlestown.

18 Q. In the time you were the Director of
19 Personnel did she work for you?

20 A. Yes, she did.

21 Q. Was she the Assistant Director of
22 Personnel?

23 A. Yes.

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30

1 Q. Did you delegate duties to her related
2 to this PeopleSoft conversion issue and the
3 differentials?

4 A. Yes, I did.

5 Q. Do you know whether or not she
6 corresponded with the City about the issue?

7 A. I don't know for a fact.

8 MR. RICE: I have no further
9 questions for you. Thank you.

10 MR. HOMSY: I don't have any.
11 (The deposition was concluded at
12 10:33 a.m.)

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4 STATE OF MASSACHUSETTS

5 COUNTY OF PLYMOUTH

6

7 I, Carolyn McGill, a Notary Public in
8 and for the State of Massachusetts, do hereby
9 certify that the foregoing transcript of the
10 deposition of Michael Cawley, having been
11 satisfactorily identified and duly sworn by the
12 Notary Public, on Thursday, June 7, 2007, is
13 true and accurate to the best of my knowledge,
14 skill and ability.

15 IN WITNESS WHEREOF, I have hereunto set
16 my hand and seal this 7th day of June, 2007.

17

18

19 _____ Carolyn McGill

20

21 My commission expires:

22 April 21, 2011

23

LEAVITT REPORTING, INC.

EXHIBIT 4

MARROTTA

VERSUS

SUFFOLK COUNTY

TRANSCRIPT AND WORD INDEX FOR THE DEPOSITION OF:

THOMAS YOTTS

WEDNESDAY, JUNE 6, 2007

Leavitt Reporting, Inc.

1207 Commercial Street Rear

Weymouth, MA 02189

Telephone (781) 335-6791 Fax (781) 335-7911

Leavittreporting@att.net,

VOLUME: 1
 PAGES: 1 - 43
 EXHIBITS: 1 - 3

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS

* * * * *
 GIUSEPPE MAROTTA, et al,
 Plaintiffs,

CA# 05-10032-MEL

vs.

SUFFOLK COUNTY,
 Defendant.

* * * * *
 DEPOSITION OF THOMAS E. YOTTS, a witness
 called on behalf of the Plaintiffs, pursuant to
 Massachusetts Rules of Civil Procedure, before
 Carolyn McGill, a Shorthand Reporter and Notary
 Public in and for the Commonwealth of Massachusetts,
 at the Law Offices of Glynn, Landry, Harrington and
 Rice, LLP, 10 Forbes Road, Braintree, Massachusetts
 on Wednesday, June 6, 2007 commencing at 10:05 a.m.

4 DEPONENT

PAGE

5 Thomas Yotts

6 Examination by Mr. Rice

5

7 Examination by Mr. Homsy

35

11 **E X H I B I T S**

12 NO. DESCRIPTION

PAGE

13 1 Affidavit of Thomas Yotts

16

14 2 1/24/00 Memorandum to Sally
 Glora from Thomas Yotts

19

15 3 10/5/00 Memorandum to Charles
 Abate from Michael Cawley

25

23 LEAVITT REPORTING, INC.

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2

1 **APPEARANCES**

2 GLYNN, LANDRY, HARRINGTON AND RICE, LLP
 3 (By Daniel W. Rice, Esq.)
 4 10 Forbes Road,
 5 Braintree, Ma 02184,
 6 On behalf of the Plaintiffs.

7 SHERIFF'S DEPARTMENT,
 8 (By Russell Homsy, Esq.)
 9 20 Bradston Street,
 10 Boston, MA 02118,
 11 On behalf of the Defendant.

1 P-R-O-C-E-D-I-N-G-S

2 STIPULATIONS

3 It was stipulated and agreed by
 4 and between counsel for the respective parties
 5 that the witness will read and sign the
 6 deposition transcript within fourteen days of
 7 receipt of the transcript. And the sealing,
 8 filing and certification thereof are waived.

9 It was further stipulated and
 10 agreed that all objections, except as to the
 11 form of the question, shall be reserved until
 12 the time of trial.

13
 14 **Thomas Yotts**, having been
 15 satisfactorily identified by the production of
 16 his driver's license and duly sworn by the
 17 Notary Public, called on behalf of the
 18 Plaintiffs, on oath deposes and says as follows:

19 MR. RICE: Mr. Yotts, I can send
 20 you a copy of the deposition and it will have
 21 what's known as an errata sheet with it where
 22 you can make corrections to your testimony if
 23 for some reason you disagree with how it was

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1 transcribed.

2 THE WITNESS: Okay.

3 MR. RICE: And can we use the
4 address that we used for this subpoena for that?

5 THE WITNESS: Yes.

6 MR. RICE: Would fourteen days be
7 enough for you to be able to sign it?

8 THE WITNESS: Yes.

9 MR. RICE: It that okay with you?

10 MR. HOMSY: That's fine with me.

11 **Examination by Mr. Rice:**

12 Q. Can you state your full name for the
13 record please?

14 A. Thomas Yotts.

15 Q. Where do you reside, Mr. Yotts?

16 A. 95 Freeman Street, Quincy.

17 Q. At some point in your life were you
18 employed by the Suffolk County Sheriff's
19 Department?

20 A. Yes.

21 Q. What were the dates of your
22 employment?

23 A. From 1980 to 2005.

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6

1 Q. What jobs did you have for the
2 Sheriff's Department?

3 A. The last job that I had was Chief
4 Financial Officer which was probably for ten,
5 the last ten or fifteen years.

6 Q. Before that?

7 A. Director of Administrative Services,
8 Budget Director, Budget Analyst.

9 Q. And you were the Chief -- that's Chief
10 Financial Officer?

11 A. Yes.

12 Q. Were you the Chief Financial Officer
13 on or after January 1, 1998?

14 A. I believe so.

15 Q. Do you remember the date that you
16 started or about when as Chief Financial
17 Officer?

18 A. As Chief Financial Officer no, not
19 exactly, but -- no.

20 Q. With respect to payroll issues for
21 individuals who worked for the Sheriff's
22 Department, what role did you play as the Chief
23 Financial Officer?

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1 A. I had the Director of Personnel

2 reporting to me. So if there were issues that
3 were unable to be resolved at lower levels they
4 would have to come to me for a determination.

5 Q. While you were the Chief Financial
6 Officer who were the Directors of Personnel? If
7 you can in giving your answer identify them
8 chronologically?

9 A. Chronologically?

10 Q. Like who was first? When you first
11 started who was the Director of Personnel?

12 A. I think Anne Ryan. Are you talking
13 all the way back to 1980?

14 Q. How about just when you were Chief
15 Financial Officer?

16 A. How about reverse?

17 Q. Reverse is fine.

18 A. When I left it was Mike Harris. Prior
19 to Mike was Richard Trafalia. Prior to that,
20 Maura McDonough.

21 Q. How about an individual named Michael
22 J. Cawley?

23 A. Yeah, Michael Cawley before Maura
LEAVITT REPORTING, INC.

8

1 McDonough.

2 Q. With respect to employees' wages, as
3 the Chief Financial Officer did you formulate
4 policy with respect to how wages were paid to
5 employees?

6 A. Well, there was union contracts. It's
7 a unionized environment so there are certain
8 aspects of the policies; practices that are
9 bound by the union contracts. And anything that
10 wasn't covered by union contracts or federal or
11 state law I would have input into certainly.

12 Q. Have you ever heard of a software
13 program called PeopleSoft?

14 A. Yes.

15 Q. To your understanding what is
16 PeopleSoft?

17 A. It's a software package that has an
18 aspect of recording financial data and it also
19 has an aspect of recording personnel, human
20 resource data.

21 Q. Did the Suffolk County Sheriff's
22 Department use the PeopleSoft software or was it
23 utilized in paying wages to the employees of the

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1 Suffolk County Sheriff's Department while you
 2 were the Chief Financial Officer?

3 A. Yes.

4 Q. But that wasn't always the case?

5 A. Correct.

6 Q. There was a conversion over to
 7 PeopleSoft at some point?

8 A. Correct.

9 Q. Do you recall about when that
 10 occurred?

11 A. No.

12 Q. If I suggested to you that the
 13 conversion took place in October of 1999 would
 14 that seem correct?

15 A. Could be. I couldn't say for sure.

16 Q. Were you -- I'm sorry.

17 A. I wouldn't be able to dispute that.

18 Q. Were you as the Chief Financial
 19 Officer involved in converting the Suffolk
 20 County Sheriff's Department payroll over to the
 21 PeopleSoft system?

22 A. The conversion actually occurred
 23 because the City of Boston converted to

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10

1 PeopleSoft and they handled -- our information
 2 was sent to the City of Boston. And paychecks
 3 actually came out of the City of Boston's
 4 Treasury Department. So in a sense we were --
 5 we had really no choice but to move to the
 6 PeopleSoft system for both HR and financial
 7 data.

8 Q. Do you know why it was the case --
 9 first of all let me ask you this. During the
 10 time you were the Chief Financial Officer was
 11 that always the case that the City of Boston
 12 processed paychecks for employees of the
 13 Sheriff's Department?

14 A. Yes.

15 Q. Do you know why that was the case?

16 A. I assume it's because the County
 17 Treasurer is the -- I mean the City Treasurer is
 18 also the County Treasurer and the Sheriff's
 19 Department is a county agency.

20 Q. While you were the Chief Financial
 21 Officer in order for the City to cut the
 22 paychecks for Suffolk County Sheriff's
 23 Department employees what did the Sheriff's

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1 Department do to facilitate that?

2 A. We'd have to input information into
 3 the PeopleSoft system.

4 Q. Prior to the conversion to PeopleSoft
 5 was that also the case?

6 A. It would be done manually on sheets,
 7 data processing sheets, payroll sheets that they
 8 would send down to us and they would key
 9 information in.

10 Q. The City would send you sort of
 11 ledgers or something like that?

12 A. Payroll sheets; names, hours, salary
 13 and we would make adjustments to them.

14 Q. Who would actually do the entering the
 15 data onto the sheets that you were given by the
 16 City?

17 A. Someone in our Personnel Department.
 18 It could be a number of people.

19 Q. Did the individuals who'd do that, did
 20 they do that with respect to or by looking at
 21 the collective bargaining agreements?

22 A. No. They would probably not. They
 23 would probably take information and enter it in.

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12

1 If there was an issue that was raised, a
 2 question regarding how a situation needed to be
 3 handled then they would go to a supervisor and
 4 right up the ladder to the point of getting the
 5 issue resolved?

6 Q. Once the individuals in the Sheriff's
 7 Department recorded the data then it was
 8 physically given to the City of Boston?

9 A. Correct.

10 Q. And then the employees were paid?

11 A. Then at some point later on the
 12 employees would be paid.

13 Q. And that practice changed with the
 14 conversion over to PeopleSoft?

15 A. Correct.

16 Q. How did it change?

17 A. We were given direct access via
 18 computer to the PeopleSoft system so that we
 19 could key information directly into computers at
 20 the Sheriff's Department into the PeopleSoft
 21 system. That would then result in checks being
 22 generated from the City Treasurer's Office.

23 Q. Well, to your knowledge did the data
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1 that was entered or keyed into the PeopleSoft
 2 system differ from the data that had been
 3 transmitted with hard copies over to the City?

4 A. I couldn't say for sure but if so I
 5 wouldn't think it would be that much different.

6 Q. After the City converted to PeopleSoft
 7 did you become aware that there had been a
 8 change in the payment of overtime to employees
 9 of the Suffolk County Sheriff's Department?

10 A. I think there were -- I think I
 11 recall some actions were brought regarding that.

12 Q. Well, specifically do you recall --
 13 first of all, there are unionized employees who
 14 work for the Suffolk County Sheriff's
 15 Department?

16 A. Correct.

17 Q. And the corrections officers are
 18 unionized?

19 A. Correct.

20 Q. And at the Suffolk County House of
 21 Correction is the labor organization that
 22 represents the corrections officers known as
 23 Local 419?

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14

1 A. Yes, that's one.

2 Q. There's another union that represents
 3 corrections officers as well?

4 A. Yes, there are. At that time there
 5 were four I think.

6 Q. Do you remember what they were?

7 A. 419. There was a Local 3967 which is
 8 the House of Corrections and then two at the
 9 jail which is also under the control of the
 10 Sheriff, 1134 and 3643 I think.

11 Q. Each of those bargaining units had
 12 collective bargaining agreements with the
 13 Sheriff's Department?

14 A. Correct.

15 Q. Within those collective bargaining
 16 agreements the subject of wages was addressed?

17 A. To some degree.

18 Q. Do you recall that there were certain
 19 differentials negotiated between the Sheriff's
 20 Department and the unions for the payment of
 21 wages for different things?

22 A. Yes.

23 Q. What were some of those things?

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1 A. Night differential, weekend
 2 differential, public safety differential,
 3 depending on the unit there may be educational
 4 differential. Probably there were some more.

5 Q. The differentials, do they augment the
 6 hourly wage that the employees are entitled to
 7 receive if they qualify for the differential, is
 8 that how it works?

9 A. Yes.

10 Q. Now, prior to the conversion to
 11 PeopleSoft were those differentials to your
 12 knowledge considered in calculating the overtime
 13 for which employees were paid?

14 A. I think so.

15 Q. Now after the conversion to PeopleSoft
 16 did that change?

17 A. I don't recall for sure.

18 Q. Okay. Are you aware that at some
 19 point after the conversion to PeopleSoft the
 20 union representing -- or that the Local 419
 21 union filed a charge with the Massachusetts
 22 Labor Relations Commission alleging that the
 23 practice by which they were paid overtime had

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16

1 changed with the conversion to PeopleSoft?
 2 A. I remember there were some actions
 3 regarding the conversion. What specifically
 4 they were I don't recall.

5 Q. Do you have any recollection of
 6 writing and signing an Affidavit with respect to
 7 that prohibitive practice charge?

8 A. Would I be able to look at it?

9 Q. Yeah. Do you remember? I have to ask
 10 you that.

11 A. I don't recall.

12 (Exhibit No. 1 marked for
 13 identification).

14 Q. Why don't you just take a few minutes
 15 to look that over?

16 A. Sure. Okay.

17 Q. Now, having looked this over do you
 18 remember signing this Affidavit?

19 A. This is my signature. I don't
 20 remember signing it but I definitely did sign
 21 it.

22 Q. And does it refresh your memory as to
 23 whether or not the Union had made a charge

LEAVITT REPORTING, INC.

1 relative to the calculation of differentials for
 2 overtime after the conversion to the PeopleSoft
 3 system?

4 A. Yes.

5 Q. Just going to paragraph five --

6 A. Uh-huh.

7 Q. -- it states the new system does not
 8 automatically include differentials paid to
 9 certain employees in calculating the overtime
 10 rate. Did I read that correctly?

11 A. Right.

12 Q. Having read that, prior to the
 13 conversion of PeopleSoft were the differentials
 14 included in the calculation of the overtime
 15 rate?

16 A. I don't recall, but it appears so. I
 17 would say from reading this that they probably
 18 were.

19 Q. Do you recall at some point being
 20 notified by representatives of the Union that
 21 the differentials were not being included in the
 22 overtime being paid Sheriff's Department
 23 employees?

LEAVITT REPORTING, INC.

18

1 A. I don't recall that.

2 Q. Do you know somebody named Cindy
 3 McManus?

4 A. Yes.

5 Q. Who is she?

6 A. She at that time was a representative
 7 from AFSCME.

8 Q. Was she responsible for representing
 9 Local 419 employees?

10 A. I'm not positive but she could have
 11 been.

12 Q. Did you meet with Cindy McManus and
 13 local union officials about the PeopleSoft
 14 conversion?

15 A. We discussed the issue. Whether it
 16 was a meeting specifically for that purpose or
 17 in conjunction with other discussions whether
 18 they be collective bargaining in general or
 19 labor issues in general I couldn't be sure.

20 Q. Do you recall being concerned about
 21 the fact that or do you recall being concerned
 22 that the differentials were not being calculated
 23 in the overtime payments for Sheriff's

LEAVITT REPORTING, INC.

1 Department employees?

2 A. There were a lot of -- there were a
 3 number of issues in the conversion that the
 4 Sheriff's Department was concerned about. That
 5 may have been one of them.

6 Q. Do you know an individual named Sally
 7 Glora?

8 A. Yes.

9 Q. Who is she?

10 A. She was the City Auditor at the time.

11 Q. At some point after the conversion to
 12 PeopleSoft did you send Sally Glora a memorandum
 13 about your concerns about the conversion and how
 14 it impacted employees of the Sheriff's
 15 Department?

16 A. I may have.

17 Q. I'm going to show you another exhibit.
 18 (Exhibit No. 2 marked for
 19 identification).

20 Q. I will give you a few minutes. It's a
 21 pretty long memo so take your time.

22 A. Okay.

23 Q. Have you had a chance to read Exhibit
 LEAVITT REPORTING, INC.

20

1 Two?

2 A. Yes.

3 Q. Is Exhibit Two a memo that you wrote
 4 to Sally Glora?

5 A. Yes, it is.

6 Q. And the subject of it is the
 7 PeopleSoft conversion --

8 A. Yes.

9 Q. -- and the impact that had on the
 10 payroll for Suffolk County Sheriff's Department
 11 employees?

12 A. Yes.

13 Q. I'm going to cut to the chase here and
 14 ask you to turn to the second page of the memo
 15 to the second to last bullet point.

16 A. Okay.

17 Q. It says the method of FSLA overtime
 18 rate calculation is not consistent with that
 19 used by the SCSD before implementation. Did I
 20 read that correctly?

21 A. Yes.

22 Q. How is the method of FSLA overtime
 23 rate calculation not consistent with what the
 LEAVITT REPORTING, INC.

1 Sheriff's Department had used before PeopleSoft
 2 was implemented?
 3 A. I don't exactly recall.
 4 Q. Well, at the time you wrote this
 5 though you were concerned enough to put it into
 6 a bullet point obviously in the memo you wrote
 7 to Glora?
 8 A. Yes. It definitely was a problem.
 9 Q. What is the FSLA?
 10 A. Fair Standards in Labor Act I believe.
 11 Q. Is it actually the FLSA, Fair Labor
 12 Standards Act?
 13 A. It could be.
 14 Q. While you were the Chief Financial
 15 Officer did you have responsibilities for making
 16 sure that the Sheriff's Department complied with
 17 the Fair Labor Standards Act?
 18 A. In conjunction with our General
 19 Counsel's Office. If there was a question of
 20 what was legal or not I would consult the
 21 General Counsel's Office.
 22 Q. But you had no doubt at the time that
 23 you were working at the Sheriff's Department

LEAVITT REPORTING, INC.

22

1 that the Fair Labor Standards Act applied to the
 2 Sheriff's Department, right?
 3 A. I was under that impression.
 4 Q. Was it your impression that that
 5 applied to the members of Local 419?
 6 A. Yes.
 7 Q. And also to the members of Local 3643?
 8 A. Yes.
 9 Q. And to the other locals represented by
 10 AFSCME at the time?
 11 A. Yes.
 12 Q. Now, part of what the Fair Labor
 13 Standards Act addresses is the payment of
 14 overtime, correct?
 15 A. I believe so.
 16 Q. Was that your understanding when you
 17 were the Chief Financial Officer?
 18 A. Yes.
 19 Q. With respect to the differentials that
 20 you testified to earlier, were those included in
 21 the calculation of overtime paid to unionized
 22 members of the Sheriff's Department, unionized
 23 employees of the Sheriff's Department prior to

LEAVITT REPORTING, INC.

1 the conversion to PeopleSoft?

2 A. I don't recall.
 3 Q. After the conversion were they not
 4 included in the overtime calculations?
 5 A. I don't recall.
 6 Q. Turning back to Exhibit One, looking
 7 at paragraph five, I will just read your
 8 statement there again. The new system does not
 9 automatically include differentials paid to
 10 certain employees in calculating the overtime
 11 rate.
 12 A. Uh-huh.
 13 Q. Does that refresh your memory as to
 14 how overtime was calculated with respect to the
 15 differentials before and after the PeopleSoft
 16 conversion?
 17 A. My hesitancy in answering yes is that
 18 one of the things that we did after the
 19 PeopleSoft conversion was to -- there was
 20 separate payments which I think are spoken about
 21 a little bit in the memo that were made because
 22 the system didn't do certain things. Then data
 23 would be entered in.

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1 And like it said there's an
 2 example of someone receiving a check for \$7.52.
 3 Officers used to get multiple checks each week.
 4 So some of those other checks may have been the
 5 differentials and may have been as a result of
 6 what PeopleSoft could and couldn't do. So
 7 that's why I can't say definitively yes, they
 8 were included or they weren't.
 9 Q. After you wrote your memo to Miss
 10 Glora did you have conversations with her about
 11 the issues that you identified in the bullet
 12 points?
 13 A. I may have. I don't recall.
 14 Q. Do you recall having any conversation
 15 with her about Fair Labor Standards Act
 16 compliance?
 17 A. I don't recall. I certainly may have.
 18 Q. Earlier you identified an individual
 19 named Michael Cawley?
 20 A. Yes.
 21 Q. Was he the Director of Personnel in
 22 October of 2000?
 23 A. I don't know for sure.

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1 identification).

2 Q. We have placed before you what's been
3 marked as Exhibit Three --

4 A. Uh-huh.

5 Q. -- which is a memo to Charles Abate
6 from Michael Cawley with a cc to Thomas Yotts.
7 I'll just give you a few minutes to look that
8 over.

9 A. Okay.

10 Q. Have you had a chance to read that,
11 Mr. Yotts?

12 A. Yes.

13 Q. First of all, this memo was addressed
14 to a person named Charles Abate?

15 A. Abate.

16 Q. Sorry. Was he the Director of
17 Employee Relations on October 5, 2000 at the
18 Sheriff's Department?

19 A. I don't think so. I'm not sure there
20 was a director. He was an attorney who handled
21 employee relations.

22 Q. And the author of the memo here is
23 LEAVITT REPORTING, INC.

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1 Michael J. Cawley, Director of Personnel?

2 A. Yes.

3 Q. And you're copied on it as the Chief
4 Financial Officer?

5 A. Correct.

6 Q. Did you receive this?

7 A. I believe I did.

8 Q. Ian Gaisford, did he report to you?

9 A. Yes, he did.

10 Q. And this memo relates to the issue of
11 overtime calculations paid to Sheriff's
12 Department employees?

13 A. Correct.

14 Q. One of the issues is how overtime had
15 been calculated prior to October 5, 2000, right?

16 A. Correct.

17 Q. And there's an underlined section in
18 bold, FLSA calculation prior to PeopleSoft?

19 A. Correct.

20 Q. Now, in the first paragraph that
21 describes how employees of the Sheriff's
22 Department came to be paid their regular pay and
23 overtime pay prior to the time PeopleSoft was

LEAVITT REPORTING, INC.

1 implemented, right?

2 A. Right.

3 Q. And it recounts what you testified to
4 earlier, correct?

5 A. Right.

6 Q. That data was taken over to the City
7 and the City would -- I'm going to quote here --
8 would include the number of OT hours worked
9 multiplied by the FLSA rate?

10 A. Uh-huh.

11 Q. Is that your understanding of how
12 payments were made?

13 A. Yes.

14 Q. The last sentence of this paragraph
15 says the FLSA rate included payments received
16 for regular hours worked and differentials. Did
17 I read that accurately? Do you see that? I can
18 show you.

19 A. Yes.

20 Q. Does that refresh your memory as to
21 how Sheriff's Department employees were paid,
22 how their overtime was calculated prior to the
23 conversion over to PeopleSoft, that the

LEAVITT REPORTING, INC.

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1 differentials were included in the FLSA rate?

2 A. Yes.

3 Q. Now that changed after the City of
4 Boston converted to PeopleSoft, right?

5 A. It appears so.

6 Q. It changed in that the differentials
7 were no longer included in the FLSA rate?

8 A. Correct.

9 Q. At the time you received this memo did
10 you understand that or was it your belief that
11 the manner in which employees were being paid
12 without their differentials being included in
13 their FLSA rate was a violation of the FLSA?

14 A. Repeat the question please.

15 Q. Was it your understanding at the time
16 that you received this memo that because the
17 employees were not having their differentials
18 included in their FLSA rate that that was a
19 violation of the FLSA?

20 A. No.

21 Q. Did you believe that it complied with
22 the FLSA not to have the differentials included?

23 A. I believe that we were -- that the

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1 Sheriff's Department was told by the City of
2 Boston that it was in compliance with the FLSA
3 which I think this memo also states.

4 Q. Where does it state that?

5 A. I can't find it in here.

6 Q. In fact, it's fair to say that the
7 author of this memo, Mr. Cawley, advises that
8 the Department not follow FLSA guidelines in
9 paying the employees?

10 A. No, I don't think that's fair to say.

11 Q. Turning to the last page of the memo
12 could you look at the item marked or identified
13 as Option 2?

14 A. Uh-huh.

15 Q. And read that to yourself?

16 A. Uh-huh.

17 Q. It states follow the strict guidelines
18 of the FLSA in calculating OT rates. Under this
19 scenario the OT rate would include the regular
20 wages and all differentials. The wellness money
21 would also have to be included in this rate.
22 That is something that Mr. Cawley wrote?

23 A. Yes.

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30

1 Q. But in the memo he does not recommend
2 that the Department follow Option 2, isn't that
3 right?

4 A. I believe that's correct.

5 Q. At the time you received this memo did
6 you understand that the way in which employees
7 were being paid overtime did not comply with the
8 FLSA following the conversion to PeopleSoft?

9 A. No. I believe it did not follow the
10 strict guidelines of the FLSA.

11 Q. So you're making a distinction between
12 strict guidelines of the FLSA and some other
13 version of the FLSA?

14 A. Yes.

15 Q. Do you believe that there are strict
16 guidelines of the FLSA and optional guidelines
17 of the FLSA?

18 A. No. I think it says in the second to
19 last paragraph it talks about implementing every
20 aspect of the FLSA.

21 Q. Do you believe as you sit here today
22 that it was optional for the Suffolk County
23 Sheriff's Department to implement the FLSA?

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93-9 Filed 11/15/2007 Page 10 of 13

1 A. I don't know.
2 Q. Did you meet with the Union about the
3 issues that were discussed in Mr. Cawley's
4 memorandum?

5 A. I believe we met with the Union --
6 that I met with other people from the Sheriff's
7 Department with the Union to discuss the issues
8 that came about as a result of the conversion to
9 PeopleSoft, some of which are mentioned in this
10 memo.

11 Q. Did you and the Union have discussions
12 about how overtime was being calculated without
13 the differentials being included after the
14 conversion to PeopleSoft?

15 A. We may have. I don't recall
16 specifically.

17 Q. Do you recall Cindy McManus requesting
18 on behalf of the Union that the Sheriff's
19 Department go back to calculating overtime in
20 the manner it did before the conversion to
21 PeopleSoft to include the differentials?

22 A. I don't recall but she may have.

23 Q. Do you recall her telling you that
LEAVITT REPORTING, INC.

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1 employees were being paid less as a result of
2 the method of calculating overtime not including
3 the differentials?

4 A. I don't recall.

5 Q. Did you ever tell her that the
6 Sheriff's Department would make all employees
7 whole for anything that they were being
8 underpaid as a result of the PeopleSoft
9 conversion?

10 A. I don't recall.

11 Q. Wasn't one of the issues with the
12 PeopleSoft conversion that the public safety
13 differential wasn't being paid to employees?

14 A. I don't recall.

15 Q. Do you recall what if any of the
16 options Mr. Cawley advised you and Mr. Gaisford
17 and Mr. Abate about with respect to let's call
18 it the calculation dispute that the Sheriff's
19 Department adopted?

20 A. I believe we continued the City's
21 methodology.

22 Q. And you did that knowing that the
23 Sheriff's Department was not in compliance with
LEAVITT REPORTING, INC.

1 the FLSA in adopting the City's methodology?

2 A. No, I don't believe that's the case.

3 Q. Was the Department complying with the

4 FLSA?

5 A. I believe the City told us that the

6 method that they were using was in compliance

7 with FLSA.

8 Q. Who was it from the City who told you

9 that?

10 A. I don't recall.

11 Q. Just a couple more things. There's a

12 reference in here to a B A I S E project?

13 A. Uh-huh.

14 Q. What does BAISE stand for?

15 A. I don't recall.

16 MR. RICE: Off the record.

17 (Discussion off the record).

18 Q. Just a couple more questions. Turning

19 to Exhibit One, your Affidavit --

20 A. Uh-huh.

21 Q. -- you state in paragraph eight, I am

22 in the process of compiling data that compares

23 the new system and the old system and the Fair

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1 Labor Standards Act. Then in paragraph nine,

2 once the comparison is complete the Department

3 and the Union will be better informed at

4 bargaining the impact of the change.

5 Did you ever provide the Union

6 with data that made the comparison between the

7 new system, the old system and the Fair Labor

8 Standards Act?

9 A. I don't recall.

10 Q. Did you provide the Union with Exhibit

11 Three?

12 A. I don't recall.

13 Q. At any point in time you were the

14 Chief Financial Officer were you involved in

15 discussions with any other officials of the

16 Sheriff's Department about trying to make

17 adjustments so that the differentials would once

18 again be included in the overtime payments?

19 A. I may have, but I don't recall

20 specifically.

21 Q. Did you ever advise any official of

22 the Department that the Department shouldn't

23 include the differentials in the calculation of

LEAVITT REPORTING, INC.

93-9 Overtime?

2 A. I don't recall.

3 Q. Who did you report to as the Chief

4 Financial Officer besides the Sheriff?

5 A. Either the Special Sheriff or the

6 Chief of Staff. I don't recall whether both of

7 those offices were filled or only one at the

8 time.

9 Q. Would you just identify the

10 individuals who were the Chief of Staff while

11 you were the Chief Financial Officer?

12 A. Again going backwards chronologically,

13 Elizabeth Keeley, Brian Burns. That's probably

14 it for Chief of Staff.

15 MR. RICE: I have no further

16 questions. Thank you for coming in.

17 **Examination by Mr. Homsy:**

18 Q. Just a couple questions.

19 A. Sure.

20 Q. You said when you testified earlier

21 that when you transferred over to the PeopleSoft

22 there were a number of problems, one of them

23 which was payment of overtime that came to your

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1 attention. What were some of the other problems

2 that you recall?

3 A. I think Exhibit Two is a good list.

4 Q. Do you remember if that was a complete

5 list or maybe there were some others, you just

6 put highlights on there? Do you have any

7 recollection?

8 A. I don't recall.

9 Q. I believe you've also testified that

10 at no time did you ever believe that the

11 Sheriff's Department was in violation of the

12 Fair Labor Standards Act, is that accurate?

13 A. Correct.

14 Q. Why did you have that belief?

15 A. I think we were reassured by the City

16 of Boston to that effect.

17 Q. Who from the City of Boston assured

18 you that the Sheriff's Department was never in

19 violation of FLSA?

20 A. I don't recall.

21 Q. Who could it have been?

22 MR. RICE: Objection. He can't

23 speculate.

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1 Q. Were you ever made aware personally or
 2 made aware from a third party?

3 A. I don't recall.

4 Q. Who did you communicate with from the
 5 City of Boston on a regular basis?

6 A. The Auditing Department, Treasury
 7 Department, Personnel Department or Human
 8 Resources, whatever it was called, and Budget
 9 Department.

10 Q. Okay. Do you recall the people in
 11 charge of those departments in the City of
 12 Boston during the time on or around October of
 13 2000?

14 A. I believe the Auditing Department was
 15 run by Sally Glora. She may have also at that
 16 time been in charge of the Treasury. I don't
 17 recall who was in charge of Personnel. One of
 18 the people that I would contact on a regular
 19 basis would be Tom Francis in Personnel. And
 20 Budget, I can't recall again who was in charge,
 21 but we had a Budget Analyst that I would
 22 converse with on a regular basis. His name is
 23 escaping me right now also. Sorry, Tony

LEAVITT REPORTING, INC.

1 Reppucci I believe was our Analyst.

2 Q. How do you spell that?

3 A. R E P P U C C I, I think.

4 Q. Do you recall having conversations
 5 with either Tom Francis, Sally Glora or Tony
 6 Reppucci regarding the payment of overtime wages
 7 following the conversion to PeopleSoft?

8 A. I don't specifically.

9 Q. Do you recall whether anybody that
 10 worked under you had conversations that they
 11 informed you of later with either Tom Francis,
 12 Sally Glora or Tony Reppucci after the
 13 conversion to PeopleSoft regarding overtime
 14 wages?

15 A. I don't.

16 Q. Do you know what the status was of the
 17 payment of overtime wages at the time you left
 18 the Sheriff's Department?

19 A. I don't know.

20 Q. Is it fair to say that following the
 21 conversion to PeopleSoft that you followed the
 22 City of Boston's recommendation on how to
 23 calculate overtime wages?

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1 MR. RICE. Objection. You can
 2 answer.

3 A. Would you repeat the question?

4 Q. Sure. Following the conversion to
 5 PeopleSoft did the Sheriff's Department follow
 6 the recommendation of the City of Boston on how
 7 to calculate overtime wages?

8 A. I don't know if I'd call it a
 9 recommendation. It was a methodology that to a
 10 certain degree we were captive of their system
 11 and that's how their system calculated it.

12 Q. Okay. Was there anything that the
 13 Sheriff's Department could have done to use a
 14 different methodology?

15 A. No. We didn't have the physical means
 16 to do it differently.

17 Q. Did the Sheriff's Department have any
 18 physical means to verify the numbers under the
 19 new methodology to see if it was calculated the
 20 same as it was under the prior methodology
 21 before the conversion to PeopleSoft?

22 A. I think we had access to data that
 23 would allow us to do those calculations if we

LEAVITT REPORTING, INC.

1 chose to.

2 Q. Did you do those calculations?

3 A. I don't know.

4 Q. Could the Sheriff's Department have
 5 made changes to the PeopleSoft system if it had
 6 so sought?

7 A. No. We didn't control the system.

8 Q. Who were the people at the City of
 9 Boston that could control the system?

10 A. Sally Glora was the person in charge.

11 Q. Okay. So if there was to be a change
 12 made in the PeopleSoft system it would have had
 13 to have been approved by Sally Glora?

14 A. Or if she delegated the ability to
 15 somebody who reported to her.

16 Q. Did you ever make any requests to have
 17 the system changed?

18 A. I think this Exhibit Two is somewhat
 19 of a request.

20 Q. What was Sally Glora's response to
 21 Exhibit Two?

22 A. I don't recall.

23 Q. Do you recall whether there was a

LEAVITT REPORTING, INC.

1 response to Exhibit Two?

2 A. I don't.

3 Q. Did you have the understanding that
4 the union members were getting a better deal
5 with using the City of Boston's methodology than
6 they were using the prior methodology prior to
7 the conversion to PeopleSoft?

8 MR. RICE: Objection. You can
9 answer.

10 A. No. I wouldn't say one hundred
11 percent of the union members were getting a
12 better deal under the system subsequent to the
13 implementation of PeopleSoft, but certainly
14 there were some. And the question was, I guess,
15 were more better off or were less better off.

16 Q. Did you discuss this with union
17 officials?

18 A. I believe we did.

19 Q. Who did you discuss it with in
20 particular?

21 A. I don't recall.

22 Q. Did you yourself have these
23 discussions with the union members?

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1 A. I believe so.

2 Q. Do you recall around the time you had
3 these discussions?

4 A. No.

5 Q. Do you recall whether it was after
6 Exhibit Three was produced?

7 A. I don't recall.

8 Q. Okay. What was the resolution of
9 those meetings?

10 MR. RICE: Objection.

11 A. I don't recall.

12 MR. HOMSY: I have no other
13 questions.

14 MR. RICE: Thank you.

15 (The deposition was concluded at
16 11:06 a.m.)

17

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LEAVITT REPORTING, INC.

2 CERTIFICATE

3

4 STATE OF MASSACHUSETTS
5 COUNTY OF PLYMOUTH

6

7 I, Carolyn McGill, a Notary Public in
8 and for the State of Massachusetts, do hereby
9 certify that the foregoing transcript of the
10 deposition of Thomas Yotts, having been duly
11 sworn by the Notary Public, on Wednesday, June
12 6, 2007, is true and accurate to the best of my
13 knowledge, skill and ability.14 IN WITNESS WHEREOF, I have hereunto set
15 my hand and seal this 6th day of June, 2007.

16

17

18 Carolyn McGill

19

20 My commission expires:

21 April 21, 2011

22

23

LEAVITT REPORTING, INC.

EXHIBIT 5

November 24, 1998

Dear Union President/Representatives:

As you know, the City is currently implementing PeopleSoft, a state of the art software program, which will update and improve the City's current financial, human resource and payroll systems. The City's implementation of PeopleSoft will allow it to provide the following additional benefits to its employees:

- The City will be able to provide detailed summaries of earnings, deductions and leave accruals with each payment made to its employees;
- The City's new system will allow it to expand flexible spending accounts to include a medical as well as a dependent care option;
- The City will be able to pay step rate increases on an employee's true anniversary date;
- The City will be able to deduct and distribute union dues and/ or agency service fees every pay period.

In order to maximize the functionality and efficiency of PeopleSoft, the City is also considering the following changes to its current payroll system:

- Converting to a Saturday through Friday pay week instead of a Wednesday through Tuesday pay week. The existing workweek as defined in your current collective bargaining agreement(s) will not change;
- Consolidating all employee earnings (i.e., base pay and overtime) during each pay period into a single payment;

- Standardizing all deductions (i.e., health insurance, life insurance, union dues). Under this system, the City would make deductions in equal amounts, from each payment made to its employees;
- Standardizing longevity payments. Under this system, the City would include prorated longevity payments in each payment made to appropriate employees;
- Providing its employees with the option of direct deposit or having their checks mailed to their homes. Employees will receive mailed checks on appropriate Fridays. Accordingly, the City will not distribute paychecks to its employees at work.

The City hopes to implement the above-noted changes as soon as possible but no later than January 1, 2000. If you would like to discuss any of these changes and/ or new benefits, please contact my office as soon as possible, but in no event later than March 26, 1999.

Thank you for your anticipated cooperation.

Very truly yours,

Virginia Tisei, Director
Office of Labor Relations

cc. Dennis DiMarzio, COO, City of Boston
Edward Collins, CFO, City of Boston
Sally Glora, Director, BAISP
Joe Sarno, Esq.

EXHIBIT 6

TO: Charles Abate - Employee Relations
 FROM: Michael J. Cawley - Director of Personnel
 CC: Thomas Yotts - Chief Financial Officer
 Ian Gaisford - Deputy Financial Officer
 DATE: October 5, 2000
 RE: Overtime Calculation

The intent of this memo is to provide you with information regarding overtime calculation so the Department can formalize, with both City Hall and the Unions, our policy on calculating overtime rates. Please find below descriptions of how OT has been calculated in the past, how we currently calculate OT and recommendations on how we should calculate OT.

FLSA Calculation Prior to PeopleSoft

Prior to the conversion to PeopleSoft in October of 1999, our payroll data including OT calculation was processed on Dataease. The Personnel Division would send a weekly OT disk up to City Hall, which would include the number of OT hours worked multiplied by the FLSA rate. The FLSA rate included payments received for regular hours worked and differentials.

Example 1:	John Smith	40 hrs per week @ \$20.00 for a weekly salary of	\$800.00
		40 hrs of Night Diff @ \$1.00 pr hour	\$40.00
		16 hrs of Weekend Diff @ \$1.00 pr hr	<u>\$16.00</u>
			<u>\$856.00</u>

$$\text{FLSA Rate} = \$856.00 / 40 \text{hrs} = \$21.40 \times 1.5 = \$32.10$$

Example 2: John Smith Called in sick on one day

40 hrs per week @ \$20.00 for a weekly salary of	\$800.00
32 hrs of Night Diff @ \$1.00 pr hour	\$32.00
16 hrs of Weekend Diff @ \$1.00 pr hr	<u>\$16.00</u>
	<u>\$848.00</u>

$$\text{FLSA Rate} = \$848.00 / 40 \text{hrs} = 21.20 \times 1.5 = \$31.80$$

Notes:

It should be noted that the intent of the Dataease calculations was to include the amount employees earned in differentials into the OT rate paid.

It also should be noted that the rate calculated was based on the previous workweek and not the week in which the overtime was worked. Strict interpretation of the FLSA dictates that these calculations be generated for the week in which the employee works OT.

It should also be noted that when employees had not worked forty hours, they were still paid at a rate of least 1.5x the regular rate. The FLSA states that until an employee actually works forty hours, he/she should be paid at straight time. (see Example 2 on page 2)

FLSA Calculation by PeopleSoft, 10/99 to present:

The BAISE project has configured the PeopleSoft System to calculate overtime at 1.5 x the regular hourly rate.

Example 1:	John Smith	40 hrs per week @ \$20.00 for a weekly salary of	\$800.00
		40 hrs of Night Diff @ \$1.00 pr hour	\$40.00
		16 hrs of Weekend Diff @ \$1.00 pr hr	<u>\$16.00</u>
			<u>\$856.00</u>

$$\text{FLSA Rate} = \$800.00 / 40 \text{hrs} = 20.00 \times 1.5 = \$30.00$$

Ms. Sally Glora, City of Boston Auditor and Project Manager of the BAISE Project indicated that the reason the BAISE project does not utilize FLSA calculations is that employees who are paid 1.5x the regular hourly rate are receiving a better rate than if FLSA guidelines are followed. The specific guideline that Ms. Glora is referring to states that until an employee actually works 40 hours, only then, are they entitled to hours paid on an overtime rate. (see below example)

Example2:	John Smith	32 Reg hrs per week @ \$20.00 for a weekly salary of	\$640.00
		8 Sick hrs (or Vac, Comp & Credit)	\$160.00

If Mr. Smith works 8 hr OT in this week, he would earn those 8 hrs at the regular rate of \$20.00 pr hour because he did not work 40 hours in that week.

In my opinion, the City of Boston came to the conclusion that employees were most likely being over paid by using the flat 1.5 rate. The City is willing to overlook that added expense in exchange for not adhering to the extensive guidelines required to fully implement the FLSA. Fully implementing the FLSA guidelines would be an administrative and logistical nightmare for the BAISE project.

Recommendations

Based on meetings with the BAISE project leaders and as a result of inquiries from AFSCME, I feel as though we have two viable options. These options are based on the assumption that we are either going to follow the FLSA and all it's guidelines or that we are going to follow the CBA's in reference to "hours of work and overtime" language. In my opinion we have to educate the unions as to the options available.

Option 1 --Continue to calculate the overtime rate at 1.5x the regular rate. This would benefit both the employees as well as the Department.

Employee Benefit's

- The employees would benefit by not having to actually work forty hours in a week in order to earn more than their regular rate of pay for OT hours. For example, an employee could use a "comp taken" day, work overtime and be compensated at the 1.5 rate. Under the FLSA scenario, an employee would take a comp day, work overtime and be compensated at straight time for the OT worked. This would be our strongest argument to the unions for keeping the rate as it is currently calculated.

- The employees would benefit in that they would receive a consistent OT rate as opposed to a different rate each week. This would eliminate confusion.

Department Benefits

- The Personnel Division would not have to expend the time and resources of working with the BAISE Project on such a grand undertaking.
- The Department would not be at risk of having to change the OT calculation if and when we are assumed by the state.
- The Department would finally bring closure to the conflicting language between the FLSA and the CBA's.
- The Department would not have to calculate any retroactive OT payments from October 1999. An undesirable result of any retro calculations will most likely bring to light that employees have been overpaid under the FLSA guidelines.

Option 2—Follow the strict guidelines of the FLSA in calculating OT rates. Under this scenario, the OT rate would include the regular wages, and all differentials. The wellness money would also have to be included in this rate.

Employee Benefits

- Some employees would see an increase in their OT rate as a result of including the various differentials. This would only affect individuals who do not take time off.

Department Benefits

- The Department would finally be in full compliance with the FLSA.
- This could lead to a small decrease in the amount of sick time taken. For example if an officer knows that if he calls in sick and works overtime in the same pay period, he/she will only be paid straight time for the OT hour worked.

In conclusion, I feel that the Department's stance should be similar to that of the City of Boston as it relates to the overtime calculation. We either follow the language of the CBA's and not include differentials in OT calculation, or we implement every aspect of the FLSA including the provision that employees must work forty hours before the FLSA rate takes effect. I think we have to convey to the unions that at best, with strict adherence to the FLSA, some of their members may receive additional compensation but many of their members will only receive straight time for overtime worked in a week in which they utilize accrued time. I am also confident that if retroactive payments are required to be processed under the FLSA rules, many employees would owe the Department money.

I realize this is a lot to digest so please call me with any questions or concerns so we may bring this issue to a conclusion.

EXHIBIT 7

Volume: I
Pages: 1 to 88
Exhibits: per index

COMMONWEALTH OF MASSACHUSETTS
BEFORE THE LABOR RELATIONS COMMISSION

* - - - - -
In the Matter of Case No:
MUP-01-2911

SUFFOLK COUNTY SHERIFF'S
DEPARTMENT

vs.

AFSCME, COUNCIL 93

* - - - - -

Commissioners Participating:

Helen A. Moreschi, Chairwoman
Peter G. Torkildsen, Commissioner
Mark A. Preble, Commissioner (Dissenting)

Hearing Officer: Cynthia Spahl

Appearances:

Kathleen Cawley, Esquire Representing Suffolk
County Sheriff's
Department

Angela Wessels, Esquire Representing AFSCME,
Council 93

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1 that point.

2 HEARING OFFICER: Thank you. Would you
3 like to call your first witness?

4 MS. CAWLEY: Yes. I'd call Maura
5 McDonough, please.

6 HEARING OFFICER: Do you swear or affirm
7 that the testimony that you are about to give is the
8 truth, the whole truth and nothing but the truth?

9 THE WITNESS: Yes.

10 HEARING OFFICER: You may be seated.

11 **DIRECT EXAMINATION**

12 **BY MS. CAWLEY:**

13 Q. Can you state your name and position, please?

14 A. My name is Maura McDonough, and I am the Director of
15 Personnel at the Suffolk County Sheriff's
16 Department.

17 Q. And prior to being named Director of Personnel, what
18 was your position?

19 A. Assistant Director of Personnel.

20 Q. And what was your main area of responsibility?

21 A. Payroll.

22 Q. Are you familiar with the issue of the PeopleSoft's
23 conversion?

24 A. Yes.

1 Q. And can you just give us a little background on how
2 that all came about and what evolved on that?

3 A. As Sally said, back in '97 they made the decision to
4 computerize the payroll. I had a couple of meetings
5 up at City Hall, group meetings with a person
6 selected from each department, and we discussed a
7 time frame back in '97 and then '98.

8 By the time the summer of '99 came around,
9 that's when we -- I was pretty much up at City Hall
10 three days a week at the base project with other
11 members of City Hall, and we were discussing what we
12 needed the system to do. They were showing us on a
13 live version of the system, you know, a computer
14 right in there, hands-on, what the system could do,
15 the changes that were going to be made and the like.
16 And we actually did go live. It was actually
17 October 30th the first day we were paid on
18 PeopleSoft. That's week ending November 5th, 1999
19 was the first paycheck that was cut on PeopleSoft.

20 Q. And were there problems with those paychecks?

21 A. Yes, yes, there was.

22 Q. Can you just describe some of the different issues
23 that came up in the beginning?

24 A. At the very beginning, I believe it took about seven

1 weeks for anyone to receive any public safety
2 differential at all. There was a problem with that
3 upload. What happens is all the rates of pay are
4 done in OHR at City Hall. I give them the rate, the
5 contract pretty much gives them the rate, and then
6 they'll have, you know, employee John Smith gets X
7 dollars an hour plus this differential, this
8 differential, and it will list the differentials
9 down.

10 For whatever reason, and right now I'm not
11 entirely sure why, public safety was not in there so
12 no one got that for seven weeks, and then once it
13 did enter the system we paid them retroactively
14 seven weeks worth of public safety. Mostly everyone
15 got a weekly paycheck every single week. I mean,
16 there were days where some people got an extra day
17 of pay.

18 HEARING OFFICER: Just a second, please.
19 This is Tape 3 in Case Number MUP-01-2911, Suffolk
20 County Sheriff's Department and AFSCME, Council 93.
21 You may continue.

22 A. Thanks. Like I was saying, most of the problems
23 were related to differentials being paid correctly.
24 There were other problems, though, that related to

1 schedules.

2 Prior to the conversion, I requested that
3 1134 be classified as salaried, and that is because
4 they worked 32 hours one week and then 48 the next,
5 at least a lot of their members do. And in order to
6 pay 40 hours each week, they had to be salaried. If
7 they weren't, then they would literally get a check
8 for 32 hours one week, 48 hours the next.

9 Once we went live, we realized that that
10 was also a problem for all other uniformed officers
11 because they can do swap-ons, swap-off, they can
12 swap intershift, and for many other reasons they
13 needed to be salaried as well. Originally, we just
14 thought it was 1134, but as the first couple of
15 paychecks came out, the captains would be paid 48
16 hours one week and then 32 the next. So basically
17 what we had to do is we had to put fake schedules in
18 the system. We had to pretend that all of our
19 captains and lieutenants and all of 419 members
20 worked 40 hours a week regardless of whether or not
21 they worked a swap or whether they had every other
22 weekend off.

23 Q. Could you just explain a little bit how the overtime
24 calculation was done under the Data E's way?

1 A. In the Data E's System, all differentials and
2 regular weekly hourly rates were in the system. So
3 if an officer worked -- was on the night shift and
4 got public safety differential, then that was
5 included in their OT in the sense that if they got
6 40 hours of public safety, 40 hours of night dif.
7 and 40 hours of regular pay, all of that would be
8 added up, divided by 40 and that would be their
9 overtime rate.

10 In the same respect, if an employee took a
11 comp day or a personal day or a sick day and they
12 were not entitled to the differentials, then they
13 would get 32 hours of public safety, 32 hours of
14 night dif., 40 hours of actual pay, and then that
15 would be divided by 40, so the overtime rate would
16 have been slightly lower than if they actually
17 worked every single day that week. So every week
18 every employee's overtime rate was different.

19 Q. And how was that sent up to City Hall?

20 A. On a disk. We ran reports in Data E's, saved them
21 on a disk and someone would walk up, bring that disk
22 up to City Hall.

23 Q. And how is the overtime rate calculated now under
24 the People Soft System?

1 A. Now, it is their hourly rate multiplied by 1.5.

2 Q. Have there been other changes in the system from
3 Data E's to PeopleSoft as a result of those --

4 A. Yes. Under Data E's if someone was paid a comp day
5 or a credit day or a sick day, the system could take
6 the differentials away from that person and they
7 wouldn't earn differentials for that day, but
8 because of scheduling reasons in the way they can
9 work swaps, and I'll give you an example to make
10 this clear, but we can't enter time. At least if we
11 did, it would cause more problems in the paychecks.
12 If we cannot -- if someone takes a comp or a credit
13 day, we cannot put an earn code in the system that
14 says that John Smith took a credit day. So since we
15 can't enter that into the system, he, John Smith, is
16 actually getting differentials for taking credit
17 time when he shouldn't.

18 Q. And is that -- when did that stop?

19 A. When PeopleSoft -- when we went live with
20 PeopleSoft. And the reason is at the House of
21 Correction an employee can swap intershift, meaning
22 that if he's on the 7 to 3 shift everyday and he
23 swaps on the 3 to 11 shift, so in effect he's
24 working 48 hours that week, we don't pay him for 48

1 hours, we only pay him for 40 because when he swaps
2 off a week or two later, we're not going to pay him
3 32, we're just going to pay him the 40, and they
4 cancel each other out.

5 If the employee called in sick on that
6 swap-on, the system wouldn't know not to pay him.
7 The system can't say all right, I'm going to pay you
8 8 hours of sick time, but I'm not going to pay you
9 for 6. It wouldn't know how to recognize that. So
10 that employee would in effect get paid for 48 hours
11 that week because he worked 40 reg and then he
12 called in sick on his swap. Does that make sense?

13 Q. Yes.

14 A. Okay. That is the reason we need them to be
15 salaried. I mean, if they were salaried, I could
16 put that they called in sick for 72 hours a week and
17 it would still only pay them 40.

18 Q. Sally testified that under the Data E's way,
19 differentials were included in the overtime. Can
20 you explain why they are not -- your understanding
21 of why they're not in the PeopleSoft System at this
22 point?

23 A. We could pay -- we could pay, using John Smith
24 again, if he worked 8 hours of overtime and he had

1 public safety dif. and night dif., the system has
2 the ability to pay him dollar for dollar, hour for
3 hour for that overtime shift. I could just tack on
4 an extra dollar an hour onto his hourly rate or an
5 extra \$2.00 onto his hourly rate, but that still
6 wouldn't be in compliance with the Data E's way.

7 Q. And why do you say that?

8 A. Because under Data E's, we didn't pay differentials.
9 We didn't just add -- if the differential was a
10 dollar an hour, we didn't just add a dollar to their
11 hourly rate. We added whatever they actually worked
12 the week before, divided it by 40, and that was
13 their hourly rate.

14 Q. So is it your testimony that the way the People Soft
15 System is set up, it would be impossible to
16 duplicate the Data E's way?

17 A. Yes.

18 MS. WESSELS: I'm going to object to the
19 question as leading.

20 HEARING OFFICER: Basis?

21 MS. WESSELS: I was going to raise an
22 objection to the question as leading, but it has
23 been answered.

24 HEARING OFFICER: So is that objection now

1 withdrawn?

2 MS. WESSELS: Yes.

3 HEARING OFFICER: Okay.

4 Q. How many times did you try to resolve this issue
5 with City Hall?

6 A. I believe you have copies of at least four or five
7 e-mails that I sent. There had to have been
8 twenty-five e-mails that were sent between me and
9 members of the base team that worked for Sally
10 Glora, and then the memo from Tom Yotts to Sally
11 Glora was a result of those e-mails not being
12 answered to my satisfaction.

13 Q. And this was right at the beginning of the chain?
14 Was this at the beginning of the chain?

15 A. The very first paycheck, I believe it was actually
16 Paul Fahey, very first week walked in and said this
17 is not -- this isn't how this should work.

18 Q. Are you familiar with the term actual hours worked?

19 A. Yes, I am.

20 Q. And what does that mean?

21 A. It has meant different things over the years, but
22 under the current contracts actual hours worked is
23 any regular day that the employee works and any
24 vacation day that the employee works, and what that

1 means is they'll get differentials for any vacation
2 day and any reg day that they work.

3 Q. And why were vacations included and other time off
4 not?

5 A. Because if an employee has worked with the
6 department for 20 years, he gets six weeks vacation.
7 There's no reason why he should be penalized for
8 getting more vacation. So if we didn't include
9 vacation, then new hires who only get two weeks, at
10 the end of the year would actually get paid more
11 differentials than someone who had six weeks of
12 vacation.

13 Q. And if a person takes a comp or credit day, are they
14 entitled to a differential for that time?

15 A. No, they are not.

16 Q. And under the PeopleSoft System, what has been
17 happening with that?

18 A. They have been getting paid differentials for any
19 comp or credit or sick time taken.

20 Q. And do you have any examples of such?

21 A. Yes, I do.

22 MS. WESSELS: I'm going to raise an
23 objection to any further inquiry along these lines.
24 The issue before -- and these are the grounds. The

1 issue before the Commission is a unilateral change
2 in the calculation of paying overtime to these
3 officers, and what the department I think is seeking
4 to do is kind of give an explanation for why it's
5 justified based on some other mistake that they say
6 is going on in the People Soft System, and I don't
7 think that it's this Commission's job to kind of
8 balance all of the equities of PeopleSoft to see if
9 somehow the department is coming out ahead or the
10 union is coming out ahead in all the payment of all
11 these differentials.

12 I think that this testimony is, from our
13 point of view, irrelevant to the issue in this case.
14 The witness is testifying about the payment of
15 differentials other than on overtime, under other
16 working conditions, and I -- my concern is that by
17 taking this testimony and taking this case there,
18 the department is seeking to kind of involve all of
19 us in a grand balancing scheme of equities in People
20 Soft, and I don't think -- that's not why we're
21 here. We're not here to look at, you know, in the
22 long run is the department and the union coming out
23 ahead. We're looking at did they make a unilateral
24 change without bargaining. So I'm going to object

1 to anymore inquiry on the payment of differentials
2 other than on overtime.

3 HEARING OFFICER: Do you have a response,
4 Ms. Cawley?

5 MS. CAWLEY: I do. And basically I agree
6 with Angela somewhat, but I think it's important to
7 see that the system -- there was a problem with the
8 system, and it's not just the overtime calculation
9 that changed, and obviously it's in the department's
10 interest not to overpay people so that -- I guess it
11 is kind of a balancing thing, but to show also that
12 this is a problem that we've been trying to fix
13 right along. We obviously do not want to overpay
14 people. We want to try to get the matter resolved.
15 So it sort of shows the department's position where
16 it's a matter that has to be fixed on both sides,
17 and had we known it was going to happen, it
18 obviously wouldn't have happened.

19 HEARING OFFICER: Do you have anything to
20 add?

21 MS. WESSELS: You know, I think that it's
22 quite literally irrelevant to the issue in this
23 case. I don't really have anything more to add to
24 that.

1 HEARING OFFICER: All right. I'll sustain
2 the objection.

3 Q. As you understand the PeopleSoft System right now,
4 is there a way to put differentials into the system?

5 A. Yes. There are two different ways to put
6 differentials into the system. One is the same way
7 we put in the hourly rate which is we just send up a
8 memo to OHR at City Hall that says put in a \$1.00
9 differential for every hour this person works. The
10 other way is in time and labor, and that is on their
11 calendar, their weekly calendar, and that's how we
12 pay weekend differential. And the reason there's a
13 difference between the two, all differentials, with
14 the exception of weekend differential and shift
15 commander differential and division manager
16 differential, get paid for 40 hours a week if the
17 person works 40 hours a week. Weekend dif., you
18 only get it if you work on the weekend so maxed you
19 can get it for 16 hours. Shift commander
20 differential, you only get it if you actually work
21 as the shift commander. So that's -- there's two
22 different ways you can pay them.

23 The problem is there's no way to take
24 differentials away from a person without them being

1 salaried unless I decide that it's okay to overpay
2 people and underpay -- if I wanted to say, all
3 right, 32 hours a week one week, 48 hours the next
4 and have it go like that every single week for the
5 employees, then I could pay them -- then I could
6 take the differentials away from them. But the way
7 the system is right now, I can't take differentials
8 away from them, and that's why the system will never
9 match the Data E's way.

10 In the Data E's way, I had the ability to
11 take differentials away from people if they took
12 time. Under this system, if they were salaried, I
13 could do that, but since they're not salaried, I
14 cannot.

15 Q. And have you tried to get the employees salaried?

16 A. Yes, I have.

17 Q. And what steps have you taken to accomplish that?

18 A. Numerous e-mails, numerous memos, just numerous
19 requests to City Hall.

20 Q. And what has been the response from City Hall?

21 A. For a long time they stated, "In due time, in due
22 time. Just do us up a memo." Then I'd do the memo
23 and they'd say, "Oh, well, we have to counter back
24 with our own labor relations." I have never gotten

1 a definitive answer, yes, we can allow these people
2 to be salaried or no, we cannot.

3 Q. Do you know who you have spoken to at City Hall
4 regarding this issue?

5 A. I have spoken to Sally Glora. She referred me to
6 OHR, Vivian Leonard. I spoke with Tommy Francis who
7 works for Vivian Leonard. He referred me to
8 Employee Relations. Employee Relations, I'm sort of
9 on hold with them at the moment.

10 Q. So is it your expectation that the employees may be
11 salaried at some point?

12 A. It is my hope that they will be salaried. At this
13 point I have not been told either yes or no.

14 Q. And if employees are salaried, will the
15 differentials be calculated in with the overtime
16 rate? When would you put differentials into the
17 system?

18 A. Once I'm salaried -- once the employees are
19 salaried, then I can do a couple of things that are
20 all related. I can enter people's sick vacation,
21 comp time taken. Then that will mean that on their
22 pay stubs their time taken will be correct, where
23 right now -- there was a question earlier, they're
24 not correct. None of the pay stubs are correct

1 because I don't have the ability to enter time for
2 them. Once they're salaried, I can enter time for
3 them. Once I can enter time for them, their
4 differentials will be paid correctly because it
5 won't be paid for various other types of time. Once
6 that happens, then we can implement one of the three
7 options that Sally gave me almost a year ago, and
8 that is similar to Data E's but not exact, but it is
9 definitely closer to the Data E's way than what
10 we're paying right now.

11 Q. And were you aware that this issue was going to come
12 up when you had the meetings back in '97 regarding
13 --

14 A. No. I was assured -- well, let me be fair to City
15 Hall. The people I met in '97 and '98 were people
16 from Anderson Consulting who know the FLSA law
17 frontwards and backwards, they know the way People
18 Soft works frontwards and backwards. They did not
19 have, of course, experience with every union
20 contract in the city. What they told me was: A)
21 that it would be in compliance with FLSA; and B)
22 that there would be -- it would be consistent with
23 what the contract currently says and with your
24 current policy and procedure. The problem is that

1 most other city departments paid overtime. I think
2 all of the city departments paid overtime on the
3 IPPS System that Sally mentioned, the city. We
4 didn't. Suffolk County Sheriff's Department paid it
5 on Data E's and then just kind of dumped the
6 information into IPPS, but it wasn't IPPS that
7 calculated it.

8 Q. Do you know if someone from the department discussed
9 this matter with the union at some point?

10 A. I believe -- I am not on the negotiating team or
11 committee or whatever you want to call it, but I
12 believe the union sat down with Tom Yotts, Charlie
13 Abate and Michael Harris on a couple of different
14 occasions. I know that Cindy and Tom had plenty of
15 conversations on the phone. At least I know that
16 from Tom. So, secondhand. I also know that I had
17 been told by Sally Glora that she had also talked to
18 Cindy McManus so I know that people had
19 conversations about it.

20 Q. And just to clarify, when were you first made aware
21 that there was a problem with the overtime
22 calculation?

23 A. The day that the check came down, I was reviewing
24 everyone's paycheck in the system. I could look at

1 it, and I could tell many things. One, public
2 safety wasn't paid; two, that overtime was just the
3 rate times the hourly rate times 1.5. I could also
4 tell that if you took a sick day, it paid you one
5 penny more than if you were on a reg day. That has
6 been corrected, but that was a -- I suppose a
7 decimal error. And then also that day or the next
8 week a few members came into me and stated that
9 various things were wrong with their checks, whether
10 it was differentials or the OT rate, they brought
11 many things to my attention.

12 MS. CAWLEY: I have nothing further.

13 HEARING OFFICER: Okay. Thank you.

14 Ms. Wessels?

15 MS. WESSELS: We do have some
16 cross-examination. I need just to consult with my
17 client for a few minutes.

18 HEARING OFFICER: Sure. Off the record.

19 (Whereupon, a recess was taken.)

20 HEARING OFFICER: Back on the record.

21 Cross, Ms. Wessels.

CROSS - EXAMINATION

23 BY MS. WESSELS:

24 Q. Good afternoon. I just have a couple of questions.

1 Now, of the four locals that are parties to this
2 particular case, are any of those employees
3 salaried?

4 A. Yes.

5 Q. Okay. And which are those?

6 A. 1134.

7 Q. Okay. Are the registered nurses salaried?

8 A. No.

9 Q. They're not. Okay. And you would agree with me
10 that the members of Local 1134, they're not having
11 -- that since PeopleSoft has gone into effect, that
12 their overtime has not been calculated with the
13 differentials?

14 A. Yes, that is true.

15 Q. Is that true?

16 A. Mm-hmm.

17 Q. But it's possible with respect to those employees
18 who are salaried?

19 A. Yes, yes.

20 Q. All right. And earlier you heard -- did you hear
21 Ms. Glora testify that an employee didn't need to be
22 a salaried employee?

23 A. Yes, and I can explain that.

24 Q. Well, this is my question. My question is she --

1 isn't she correct when she says employees don't need
2 to be a salaried employee to calculate a
3 differential in the overtime?

4 A. Yes.

5 Q. That's my only question.

6 A. There are --

7 Q. That's my only question.

8 A. Okay.

9 Q. Thank you.

10 MS. WESSELS: That's all the questions we
11 have. Thank you.

12 HEARING OFFICER: Redirect?

13 **REDIRECT EXAMINATION**

14 **BY MS. CAWLEY:**

15 Q. Is it -- can you talk a little bit about what Sally
16 Glora said regarding salaried employees and putting
17 in differentials?

18 A. Yes. In --

19 MS. WESSELS: I'm going to object. If we
20 could just have some foundation for when Ms. Glora
21 said this, what was the context.

22 HEARING OFFICER: Do you have a response?

23 MS. CAWLEY: Yes. Strike the last
24 question.

1 Q. Having 1134 members salaried, does that solve the
2 overtime calculation problem as far as you know?

3 A. It -- having 1134 configured as salaried, that means
4 they are configured correctly so that I could then
5 implement the steps needed to correctly calculate
6 overtime. The issue is that with them salaried and
7 the other unions not salaried, the three options
8 that Sally gave me would only be able to be
9 implemented for 1134 and not the other unions. And
10 the way we enter time on a daily basis is just all
11 the employees on such and such a date alphabetical
12 order, it doesn't say what union there is, and
13 they're just entering data.

14 MS. CAWLEY: I have nothing further.

15 MS. WESSELS: I may have one follow-up.
16 Let me just check.

17 HEARING OFFICER: Off the record.

18 (Whereupon, a brief recess was taken.)

19 HEARING OFFICER: Back on the record. Any
20 other questions?

21 MS. WESSELS: We don't have anything
22 further. Thank you.

23 HEARING OFFICER: Thank you. You are
24 excused.

1 THE WITNESS: Thank you.

2 HEARING OFFICER: Does the respondent wish
3 to call any other witnesses at this time?

4 MS. CAWLEY: No.

5 HEARING OFFICER: Does the respondent rest
6 its case in chief?

7 MS. CAWLEY: Yes.

8 HEARING OFFICER: Does the union wish to
9 call any rebuttal witnesses?

10 MS. WESSELS: No, we don't, we rest.

11 HEARING OFFICER: All right. At this point
12 then would the parties like to do closing statements
13 or briefs?

14 MS. WESSELS: The union would like to file
15 a written brief.

16 MS. CAWLEY: The employee would as well.

17 HEARING OFFICER: All right. We'll go off
18 the record.

19 (Whereupon, a discussion was held off the record.)

20 HEARING OFFICER: Back on the record.

21 After conferring with counsel, we have decided that
22 briefs will be filed at the Commission on December
23 4th, 2001. This hearing is concluded.

24

C E R T I F I C A T E

I, Suzanne M. Bruce, RPR/CSR, do hereby certify
that the foregoing hearing in the Matter of the
Suffolk County Sheriff's Department and AFSCME,
Council 93 is a true and accurate transcription of
the tape provided to me by the Commission, and
completed to the best of my ability.

Suzanne M. Bruce, RPR/CSR

EXHIBIT 8

Volume I
Pages 1-32

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

----- x
GIUSEPPE MAROTTA,

Plaintiff

vs.

SUFFOLK COUNTY,

Defendant

DEPOSITION of MAURA McDONOUGH, a witness called on behalf of the Plaintiff, taken pursuant to the Federal Rules of Civil Procedure, before Kathleen A. Gardner, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, at the Suffolk County House of Correction, 20 Bradston Street, Boston, Massachusetts, on Wednesday, June 27, 2007, commencing at 12:40 p.m.

KATHLEEN A. GARDNER
Registered Professional Reporter
11 Roman Avenue
Danvers, Massachusetts 01923

Phone: 978-777-3574 / FAX: 978-750-8342

1 APPEARANCES:

2 DANIEL W. RICE, ESQ.
3 Glynn, Landry, Harrington & Rice, LLP
4 10 Forbes Road
5 Braintree, Massachusetts 02184
6 for the Plaintiff.

7 Russell T. Homsy, Esq.
8 Suffolk County Sheriff's Department
9 House of Correction
10 20 Bradson Street
11 Boston, Massachusetts 02118
12 for the Defendant.

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1 going to represent to you it's a cover page and then
2 selected pages of a transcript of a hearing at the
3 Labor Relations Commission, starting with your
4 testimony.

5 A. Okay.

6 Q. If you would just briefly look it over and just make
7 sure it's the same thing that I e-mailed you.

8 A. (Examining document.) Yes, it is.

9 Q. Having reviewed your testimony from the Labor
10 Relations Commission in the transcript that I have
11 before you, was the testimony you gave at that time
12 accurate?

13 A. Yes. I mean -- yes.

14 Q. Did you see anything in there that you'd want to
15 change as far as your answers go?

16 A. One thing that's going to seem silly, but it's -- I
17 just misspoke in one part, and it's --

18 Q. You can take your time and find it.

19 A. (Examining document.) I can't find it. At one
20 point I say -- I think it's overtime is times hours,
21 and of course that's ridiculous. I can't find it
22 now.

23 But other than that, yes, this is what I
24 said, and I don't have anything to change.

1 Q. All right. So with the exception of that, would you
2 state on the record here that you adopt all the
3 responses that you gave to the questions at the
4 Labor Relations Commission hearing?

5 A. Yes.

6 Q. I'm going to -- I think that saves us quite a bit of
7 time, but I'm going to ask you a few other
8 questions.

9 Having read the transcript, do you recall
10 that in or about the end of 1999, beginning of 2000,
11 that the Sheriff's Department converted the way it
12 paid employees from using an in-house system called
13 Data Ease, I believe, to PeopleSoft?

14 A. Yes.

15 Q. Did that have some impact on the manner in which
16 overtime was calculated for unionized employees here
17 at the House of Correction?

18 A. Yes.

19 Q. What impact did that have?

20 A. I guess, honestly, back then when I gave this
21 testimony, I had a much better understanding of the
22 differences. I mean, to give it now would be giving
23 it on my memory.

24 I think I explain it in here, so if you have

1 Q. Okay. How did you become aware of that?

2 A. In this -- and I recall the conversation -- Paul
3 Fahey came into my office the very first check he
4 got; and he was not the only one, but he was the
5 first. He was rather vocal, and right in there with
6 the jail with me, which is where I worked at the
7 time.

8 So he was the first one to bring it to my
9 attention. When I looked myself in the system, I
10 did a double-check for all the unions, and it was
11 the same across the board. It was the regular rate
12 times 1.5.

13 Q. Okay. Now, at this point you were the Assistant
14 Director of Personnel?

15 A. Yes.

16 Q. Okay. And as a result of Paul Fahey and others
17 complaining, what did you do?

18 A. I contacted City Hall and asked them about it.
19 There was a team, sort of dually led by Sally Glora
20 and Anderson Consulting. She was the city auditor,
21 and she was sort of the lead on the whole conversion
22 project, and then Anderson Consulting was obviously
23 an outside consulting agency that came in.

24 So there was a team, and I notified that

1 team that the overtime rate was just 1.5 and didn't
2 include differentials.

3 Q. Were you concerned that the overtime rate did not as
4 it was being paid, the 1.5 without the
5 differentials, that that violated the Fair Labor
6 Standards Act?

7 A. I was concerned enough that I wanted them to
8 research it, and I wanted our own internal attorneys
9 to research it, yes.

10 Q. Okay. And was there research done?

11 A. Yes.

12 Q. At some point did you become aware or did you
13 conclude that the way of calculating overtime, which
14 is, I think you said, 1.5 times the regular rate of
15 pay without the differentials, that that violated
16 the Fair Labor Standards Act?

17 A. No, and I can tell you why. The Fair Labor
18 Standards Act states that you have to pay overtime
19 if someone works more than 40 hours, and then the
20 overtime rate kicks in.

21 We paid overtime -- based on the contracts,
22 we paid overtime even if you called in sick a day,
23 so you only actually worked 32 hours. We would pay
24 you overtime if you worked an overtime shift even if

1 Q. I'm going to show you another exhibit. I don't have
2 this stapled. We'll have this one marked.

3 (Exhibit 2 marked for identification.)

4 Q. I apologize for the lack of staples, but this
5 is what we have marked as Exhibit 2, and it's a memo
6 to Charles Abate from Michael Cawley dated October
7 5th, 2000; and I'll represent to you that
8 Mr. Cawley, the author of this, goes through a
9 history of FLSA calculations.

10 A. (Examining document.) I'm familiar with this. I
11 helped draft this. So they were not getting
12 differentials.

13 MR. HOMSY: Is there a question?

14 Q. Do you need a few seconds to read this over?

15 A. Sure. (Examining document.) Yes.

16 Q. Okay. So just a couple questions about this memo.

17 On the first page, under the first heading,
18 a sentence is written -- well, it's under the
19 heading "FLSA Calculations Prior to PeopleSoft."

20 A. Yes.

21 Q. The last sentence says, "The FLSA rate included
22 payments received for regular hours worked and
23 differentials."

24 A. Yes.

1 Q. And when the FLSA rate is referred to in this memo,
2 it's referring to the overtime rate?

3 A. Yes.

4 Q. Now, after the conversion to PeopleSoft, the
5 differentials were not included in the overtime
6 rate, correct?

7 A. That is true.

8 Q. Then there are recommendations given in the memo?

9 A. Mmm-hmm.

10 Q. Turning to the last page, which is Option 2, I'm
11 going to read the paragraph, "Option 2--Follow the
12 strict guidelines of the FLSA in calculating OT
13 rates. Under this scenario, the OT rate would
14 include the regular wages and all differentials.
15 The wellness money would also have to be included in
16 this rate." Did I read that accurately?

17 A. Yes.

18 Q. Okay. When you were involved in writing this memo,
19 was it your understanding that the FLSA rate
20 required that all differentials be included in the
21 OT rate?

22 A. Could you ask that question again?

23 Q. When you were involved in writing this memo, and
24 having had this sentence read to you, I'm asking if

1 it was in fact your understanding that the FLSA
2 required the OT rate to include the regular wages
3 and all differentials.

4 A. I guess the way it was explained to me is it had
5 to -- the wording in the law states it has to be at
6 least your wages and your differentials, at least.
7 You'll have to read FLSA.

8 MR. HOMSY: I just want to clarify for the
9 record. Is she guessing? She just said, "I guess."

10 MR. RICE: I can ask the question in a
11 different way.

12 Q. Do you disagree with the statement under Option 2
13 which says this: "Under this scenario" -- "Follow
14 the strict guidelines of the FLSA in calculating OT
15 rates. Under this scenario, the OT rate would
16 include the regular wages and all differentials"?

17 A. Yes.

18 MR. HOMSY: Try not to start answering the
19 question before he stops talking. She can't take it
20 down.

21 THE WITNESS: Sorry.

22 A. Yes.

23 Q. By the way, what's wellness money?

24 A. They have a fitness test. It's sort of a bonus.

1 Q. The Fair Labor -- I'll strike that question.

2 I'm going to show you another document.

3 (Exhibit 3 marked for identification.)

4 Q. I've got another document for you, which we've
5 marked as Exhibit 3; and for the record, I'll
6 represent that it appears to be an e-mail from you
7 to somebody named Denise Jordan; Subject: OT Rate
8 (FLSA) dated March 9th, 2000. And it looks like
9 there's an Excel spread sheet that was attached,
10 which I don't have.

11 A. (Examining document.) That would have been a
12 retroactive -- other pay. We must have -- I'm
13 guessing, but we must have signed a contract, and
14 that's the retroactive pay for the differentials
15 that -- that's a guess. I don't know.

16 Q. Okay. So let's just go through the e-mail.

17 In the second sentence of the first
18 paragraph -- excuse me -- the first sentence of the
19 second paragraph, you write, "I think it is a good
20 example of the overtime issue we discussed at the
21 meeting a couple of weeks ago."

22 Do you recall having a discussion with
23 Denise Jordan about an overtime issue?

24 A. No, but I see no reason I would have lied.

1 Q. Does it refresh your memory that in or around the
2 March 9th, 2000, time frame, you were concerned that
3 the OT rate for employees was not being calculated
4 in accordance with the Fair Labor Standards Act?

5 A. Can I just see if I can understand this e-mail first
6 for one second?

7 Q. Sure.

8 A. (Examining document.) Okay. Your question?

9 MR. RICE: Can you read it back? I forgot
10 my question.

11 (The question on Lines 1 to 4 was read by
12 the court reporter.)

13 A. It was -- it was my fear that it was not being
14 calculated the same way it was under Data Ease.

15 Q. And was your fear that -- and I'm reading the next
16 or another sentence from this. "No differentials or
17 prior OT is reflected in the actual overtime rate."

18 A. Yes.

19 Q. I'm going to show you another exhibit.

20 (Exhibit 4 marked for identification.)

21 Q. I am placing another document before you, which is
22 an exhibit that we've marked as Exhibit 4. And for
23 the record, I'll represent that this appears to be
24 an e-mail from Maura McDonough to Pat Murphy, COB

1 BAISP, dated April 10th.

2 A. Yes.

3 Q. Do you remember sending this e-mail?

4 A. Yes, I do.

5 MR. HOMSY: Don't talk until he's done. She
6 can't take it down.

7 THE WITNESS: Sorry.

8 Q. In it, you pose a question. First of all,
9 Mr. Murphy, who is he?

10 A. It's Miss Patricia Murphy.

11 Q. And who is she?

12 A. She is -- she was sort of co-lead with Sally Glora,
13 and her function -- you know, Sally was the city
14 auditor. Pat Murphy was sort of the IT specialist.
15 She was more on the IT side of that project.

16 Q. And you pose a question in this e-mail. You pose
17 two questions, but the first one is this: "Do you
18 have any idea when the overtime will reflect FLSA?"

19 A. Yes.

20 Q. Were you concerned when you posed that question that
21 the overtime did not reflect FLSA?

22 A. Yes.

23 Q. Were you concerned that FLSA was not reflected
24 because the differentials were not being included in

1 A. Yes.

2 Q. And that was dismissed because the union was
3 determined to have not filed it within the statute
4 of limitations at the Labor Relations Commission?

5 A. I got -- I don't think I've ever even read that
6 decision. I think I left before that decision came
7 down, but that is my understanding.

8 I've spoken to people since, and it is my
9 opinion that, yes, we did win that for that reason.

10 Q. Why didn't -- if you know, why didn't the Sheriff's
11 Department accede to the union's demand that the
12 differentials be put back into the overtime
13 calculations again like they were before the
14 conversion?

15 A. My understanding is it was impossible -- if not
16 impossible, then extremely, extremely difficult and
17 time-consuming.

18 The amount of work I did to fix all of these
19 problems was enormous. It was my life's work for
20 two years. So it was by no means lack of effort.
21 But there were certain things -- and it wasn't FLSA,
22 again. It was -- what the union wanted was we want
23 our differential -- "We want our OT pay to reflect
24 exactly what Data Ease paid." That was what I

1 always heard from them. "We want to go back to the
2 old way." There wasn't much wiggle room there.

3 We said, "Well, as long as we're in
4 compliance with the contract and with FLSA, you
5 know, that's what we think we can do, and that's
6 what we're going to continue to work towards. If we
7 can make it be identical to Data Ease, that's
8 fantastic, and we'll work towards that as well."

9 But it was never just "Oh, we're not going to do
10 that for you." That was never the response that
11 they got ever.

12 Q. Now, were you aware that there were other bargaining
13 units whose payroll were being handled by the City
14 of Boston who had similar issues with the
15 conversion?

16 A. Yes.

17 Q. Did you become aware at any point that individual
18 employees collectively brought claims in Federal
19 Court alleging that their rights under the Fair
20 Labor Standards Act had been violated as a result of
21 how the conversion had affected their overtime pay?

22 A. I knew the police had some sort of lawsuit going on
23 because I worked closely with Mary Ryan. I don't
24 know what venue they went before.

EXHIBIT 9

Maura McDonough, House of Corrections

From: Maura McDonough, House of Corrections
Sent: Thursday, March 09, 2000 10:59 AM
To: Denise Jordan, COB BAISP
Subject: OT rate (FSLA)

Denise,

This is a report that I received to calculate Retro for WG404, 405, 403.

I think it is a good example of the Overtime issue we discussed at the meeting a couple of weeks ago. As you can see for a regular day at one rate, the OT rate for that same person is the regular rate * 1.5. The far right column states dollar amount paid and it does not reflect a special accumulator. No differentials or prior OT is reflected in the actual OT rate. This is the case with all workgroups but they were not getting retro so I do not have a report of their time paid. I can get examples for you if you need them.

Please let me know what you think and/or if you need more information.

Thank you,



Sheriff 2-24 Oth Pay

Maura

Retro.xls...

-----Original Message-----

From: Denise Jordan, COB BAISP
Sent: Thursday, March 09, 2000 10:40 AM
To: Maura McDonough, House of Corrections
Cc: Judd Nielsen, AC BAISP
Subject: RE: WG403 Div Manager

Maura,

SHFHN(Sheriff Head Nurse) at the rate of \$0.50 has been created for WG403 effective 3/11/00.
SHFDM(Division Manager) at the rate of \$0.15 for WG403 will be inactive as of 3/11/00.

Denise

-----Original Message-----

From: Maura McDonough, House of Corrections
Sent: Monday, March 06, 2000 9:22 AM
To: Denise Jordan, COB BAISP
Subject: WG403 Div Manager

The new time reporting code should be SHFHN (Sheriff Head Nurse) at the rate of \$0.50 per hour.

Thank you

Maura

EXHIBIT 10

Maura McDonough, House of Corrections

From: Maura McDonough, House of Corrections
Sent: Monday, April 10, 2000 3:00 PM
To: Pat Murphy, COB BAISP
Subject: Questions

Do you have any idea when the Overtime will reflect FLSA? When Weekend Differential will be automatic?

Thank you
Maura

EXHIBIT 11

**COMMONWEALTH OF MASSACHUSETTS
BEFORE THE LABOR RELATIONS COMMISSION**

In the Matter of
AFSCME, Council 93,

and

Suffolk County Sheriff

Case Number MUP 01-2911

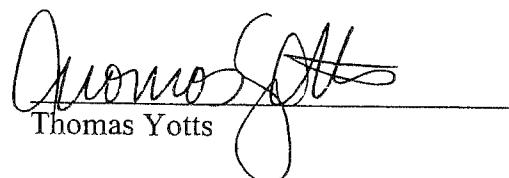
AFFIDAVIT OF THOMAS YOTTS

I, Thomas Yotts, do state under the pains and penalties of perjury that the following is true to the best of my knowledge and belief:

1. My name is Thomas Yotts. I am Chief Financial Officer for the Suffolk County Sheriff's Department. I have held this post since 1986. As Chief Financial Officer, I am responsible for financial operations of the Suffolk County Sheriff's Department. The funding of the Sheriff's Department comes from the City of Boston.
2. One of my responsibilities is to participate in the collective bargaining process with the seven union locals.
3. In late 1999 the Sheriff's Department, along with all other Departments for the City of Boston, converted to one central payroll system. The mandated change to the "peoplesoft" system resulted in a number of payroll issues.
4. One issue that has remained unresolved is the calculation of overtime for certain Sheriff's Department employees.
5. The new system does not automatically include differentials paid to certain employees in calculating the overtime rate.
6. I have been involved in discussions of this issue with the Union.
7. The new system complies with the Fair Labor Standards Act.
8. I am in the process of compiling data that compares the new system, the old system and the Fair Labor Standards Act.

9. Once the comparison is completed, the Department and the Union will be better informed in bargaining the impact of the change.

Signed under the pains and penalties of perjury this 19th day of March 2001.



A handwritten signature in black ink, appearing to read "Thomas Yotts". The signature is fluid and cursive, with a long horizontal line extending from the end of the signature.

Thomas Yotts